United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT GALE REALTY CORP., AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

623

United States Court of Appeals
For the
District of Columbia Circuit

FILED JUN 28 1957

Joseph W. Stewart
CLERK

No. 13,562

177 Parcels of Land, et al,

GALE REALTY CORP.,

Appellant,

v.

UNITED STATES,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

A. SLATER CLARKE
Room 210 Shoreham Building,
Washington, D. C.
Attorney for Appellant

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Washington, D. C.
EX 3-0625

APPELLANT'S STATEMENT OF QUESTIONS PRESENTED

1. Is a property owner in a condemnation case entitled to cross examine a government witness who testified as to the area, neighborhood and conveniences in respect to this testimony even though the government witness does not testify as to the fair market value of the Appellant's property?

2. Is it error for a trial court in a condemnation case to require a property owners witness to have personal knowledge that a comparable sale was free and willing sale between buyer and seller and to later in the case permit other property owner witnesses and government witnesses to testify as to comparable sales without establishing that they had personal knowledge that the said sales were free and willing between the buyer and seller?

3. In view of the fact that Appellant's counsel was denied the full right of cross examination and the trial court ruled inconsistently in respect to the admissibility of comparable sale should the Appellant's prayer No. 2 have been granted?

4. Did the trial court err in refusing the Appellant's motion for a new trial since there was no evidence to justify the jury's verdict in respect to the Appellant's properties?

5. Did the trial court err in refusing to require that government counsel's remark be retracted?

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 13, 562

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177 Parcels of Land, et al,
GALE REALTY CORP.

Appellant

v.

UNITED STATES

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The juridsiction of this Court is predicated upon Title 28, Section 1291, of the United States Code wherein the Court of Appeals is vested with jurisdiction to review by appeal all judgments and orders and decrees of the United States District Court.

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STATEMENT OF THE CASE

On the 30th of June 1955 the United States of America, Appellee herein filed a complaint (App. 1) for the purpose of acquiring title to properties in the District of Columbia under its power of eminent domain on behalf of the National Capital Housing Agency. The Appellant was the owner of four pieces of property involved in this litigation. The trial commenced on January 9, 1956 and the verdict was returned by the jury on February 21st, 1956 and the judgment (App. 3) was entered on February 28, 1956. The appellant filed a motion for a new trial (App. 4) on March 6, 1956 and the Court on June 14, 1956 denied the Appellant's motion (App. 5). The Appellant filed its notice of appeal on July 31, 1956.

At the beginning of the presentation of the Appellant's case the trial judge required Appellant's counsel to show preliminarily that the comparable sales which he desired to introduce into evidence were a free and willing sale between a buyer and seller (App. 17). That under this ruling Appellant's counsel was only able to introduce one comparable sale. The government in answer to the Appellant's testimony as to the fair market value of the properties in question had two experts testify in respect to the properties neither of which attempted to introduce any comparable sales. However, later in the case, which involved numerous percels of land, the trial court permitted all the property owners' witnesses and government witnesses to introduce any and all sales so long as they were comparable without establishing first that it was a free and willing sale between the buyer and seller.

In the presentation of the government's case the government called an expert witness (Mr. William Harps) who in giving his testimony referred to the community and described the conveniences,

location, and the neighborhood which included the properties of this Appellant (App. 29). After the direct examination of Mr. Harps by government counsel your Appellant's counsel requested permission to cross-examine this witness in respect to his testimony concerning the area and neighborhood (App. 29). The Court ruled (App. 30) that Appellant's counsel did not have the right to cross-examine this witness since he did not testify in regards to Appellant's property. However, later in the trial another property owner's counsel in a similar situation (App. 30), was granted the right to cross-examine a government witness in regards to any testimony he may give about the neighborhood.

Appellant's counsel faced with these two inconsistencies which occurred in this trial presented Appellant's prayer No. 2 (App. 54) with the sole purpose in mind that the jury would be restricted in its consideration of the value of the Appellant's property to the testimony that was given directly by the two government witnesses and the two property owners' witness. The Court held that the granting of this prayer would deprive the jury of the right to consider the general testimony as to the conveniences, schools, transportation, and other matters that it felt they had a right to take into consideration (App. 51). However, at that time Appellant's counsel called to the attention of the court the fact that Mr. Harps had testified for the government in respect to conveniences and the neighborhood and that Appellant's counsel had not been allowed to cross-examine Mr. Harps in regards thereto. In answer to this the Court said (App. 52) "that situation may have arisen because of the complexity of the case and the necessity on the part of the court to keep the proceedings orderly." After objection to my prayer by government counsel the Court denied Gale Realty's prayer No. 2 (App. 52).

In respect to the question of just compensation the Appellant called an expert witness (Mr. Peruzzi) (App. 14) who testified that the four properties were of similar age, construction and condition with exception that one property contained an inside bath. Mr. Peruzzi testified that all of these properties were comparable to the premises 813 - 3rd St., S.W. (App. 16) and that the 3rd Street premises were sold for the sum of Six Thousand Nine Hundred and Fifty Dollars ($6,950.00) (App. 6) and in his opinion the fair market value for the Appellant's properties was Six Thousand Four Hundred Thirteen Dollars ($6,413.00) for three of them, and Six Thousand Eight Hundred Thirteen ($6,813.00) for the other one (App. 20-21). Thereafter Mr. Brown, a former owner of one of the Appellant's properties appeared as Appellant's witness (App. 22) and testified that he formerly owned one of the premises and had purchased it for Eight Thousand Nine Hundred Fifty Dollars ($8,950.00) and had given in payment two Deeds of Trust and Notes (App. 9-13). Mr. Brown later conveyed the premises back to the Appellant because he became aware that the government would acquire this property (App. 27). Mr. Brown acknowledged that he had received a letter from the National Capital Housing Authorities (App. 8) which also motivated him to convey the property back to the Appellant.

The Appellee used two expert witnesses in attempting to establish the fair market value of the Appellant's properties. The first witness, Mr. Koones (App. 30-40) testified that the Appellant's properties in his opinion were valued at Four Thousand Twenty Five Dollars ($4,025.00). Mr. Koones claimed that he used and considered comparable sales but failed to reveal any comparable sales to the Court and also claimed that he used a capitalization system and a reproduction cost method. He admitted (App. 40) that he had no actual knowledge as to whether these houses could be reproduced for the figure set by him and never attempted to explain what depreciation percentage he used under

the reproduction cost method. The second Government witness Mr. Throckmorton (App. 42-50) claimed that the fair market value of these properties was Forty One Hundred Dollars ($4100) for three of them and Forty Eight Hundred Fifty Dollars($4850.00) for the other property. He claimed that he used the comparable sales and reproduction cost in determining the value of these properties but did not reveal any comparable sales to the Court nor did he testify as to how he arrived at the reproduction cost figure or the depreciation percentage that he applied to these properties. (App. 49).

During the closing argument to the Jury the Government counsel referred to the group of property owners "Dealing in human misery" (App. 53). Appellant's counsel requested the court to have the remark retracted by Government counsel before the jury which motion the court denied (App. 53).

SUMMARY OF ARGUMENT

The Appellant contends that this cause should be remanded for a new trial to the U. S. District Court because of the errors committed in the trial of this case which were prejudicial to the Appellant's interest.

Appellant contends that the trial court erred in not permitting Appellant's counsel to cross-examine a government witness as to testimony which materially affected the Appellant's. Appellant further contends that the trial court's inconsistent ruling in respect to the admission of comparable sales of other properties was a prejudicial error which affected Appellant's case.

Appellant contends that under the circumstances of this case the Appellant's request for Instruction No. Two should not have been denied since the denial of the said prayer permitted the jury to consider testimony of witnesses which the Appellant did not have the

opportunity or right to cross-examine. Appellant further contends that there was no evidence before the jury to justify the verdict which was returned by them and that the said verdict was contrary to law and was predicated upon sympathy and prejudice and not upon the facts of the case.

It was an error of the trial court to permit a government counsel's remark to the effect that property owners were dealing in misery to stand before the jury without requiring that said statement be retracted. This remark coming from an attorney of the United States Government was highly prejudicial to the Appellant's case.

ARGUMENT

I. Is A Property Owner In A Condemnation Case Entitled To Cross Examine A Government Witness Who Testifies As To The Area, Neighborhood And Conveniences In Respect To This Testimony Even Though The Government Witness Does Not Testify As To The Fair Market Value Of The Appellant's Property?

Appellant contends that the trial court erred in not permitting Appellant's counsel to cross examine the government witness Mr. Harps who had referred to the area and neighborhood in his testimony (App. 29). The right to cross examine a witness is an absolute right and not a mere privilege, J. E. Hanger Inc. v. United States, 81 App. D.C. 408, 160 F. 2d 8. This court has also stated in the case of Collazo v. United States, 90 U.S. App. D.C. 241, 196 F. 2d 573 that the right of cross examination is a fundamental right and may not be improperly restricted.

In considering the present case it can be seen from the reading of the transcript that the court intended that the jury should have the right to consider all the general testimony given by all witnesses in respect to the conveniences, schools, transportation and other matters (App. 51), yet the court restricted the Appellant's counsel right to cross examine a government witness in respect to these matters. (App. 29-30).

II. Is It Error For A Trial Court In A Condemnation Case To Require A Property Owner's Witness To Have Personal Knowledge That A Comparable Sale Was Free and Willing Sale Between Buyer And Seller And To Later In The Case Permit Other Property Owner Witnesses And Government Witnesses To Testify As To Comparable Sales Without Establishing That They Had Personal Knowledge That the Said Sales Were Free And Willing Between The Buyer and Seller?

The court required that the Appellant's expert witness (Mr. Peruzzi) testify preliminary to introducing any comparable sales that he first have personal knowledge concerning the comparable sale to show that the said sale was a free and willing sale between the buyer and seller. (App. 17) The Appellant recognizes that the admissibility of comparable sales in a condemnation case is generally left to the discretion of the trial court. District of Columbia Redevelopment Land Agency v. 61 Parcels of Land, 98 U.S. App. D.C. 367, 235 F. 2d 864.

Since most of the properties in this condemnation case were of similar character and construct ion the trial court ruling in respect to the admissibility of the Appellant's comparable sales was prejudicial to the Appellant's case.

Later in the trial of the case the court permitted all expert witnesses, both government and property owner witnesses, to testify in respect to any and all sales on the land records of the District of Columbia without requiring them to preliminarily show that they had personal knowledge that the said sale was free and willing between buyer and seller. Therefore, the jury had an exhaustive list of comparable sales placed before it in evidence which it could use in determining its verdict in respect to Appellant's properties. In regard to the Appellant's case the government had accomplished indirectly what the court had not permitted to be done directly by Mr. Koones and Mr. Throckmorton, the government witnesses who testified as to the

value of the Appellant's property. Having all of these comparable sales before it the jury could have used them as a comparison in respect to the Appellant's property, particularly in view of the fact that the Appellant's prayer No. 2 which the court denied would have restricted the jury's consideration of any and all testimony not directly related or given in the Appellant's case.

III. In View Of The Fact That Appellant's Counsel Denied The Full Right Of Cross Examination And The Trial Court Ruled Inconsistently In Respect To The Admissibility Of Comparable Sale Should The Appellant's Prayer No. 2 Have Been Granted?

Keeping in mind the fact that the trial court denied Appellant's counsel the right to cross examine a government witness in respect to his testimony concerning the area and the neighborhood wherein Appellant's property was located and that the trial court ruled inconsistently in respect to admitting comparable sale, the Appellant contends that the trial court permitted a prejudicial error in refusing to grant the Appellant's requested prayer No. 2 (App. 54).

If this prayer had been granted as requested it would have corrected, in the opinion of the Appellant, the before mentioned errors. In fact the trial judge must have recognized this dilemma when in answer to the question of granting Appellant's instruction number 2 the court stated (App. 51) "That situation may have arisen because of the complexity of the case, and the necessity on the part of the Court to keep the proceedings orderly. * * * *"

Notwithstanding the foregoing argument, it must be remembered that the government is the Plaintiff in a condemnation case and that the government has for its convenience joined numerous parties as defendants, however, the government is required by law to establish a case in condemnation as to each parcel of land. The jury should not be allowed to consider any testimony in respect to determining the fair

market value of a parcel of land other than the direct testimony given by the witnesses for each side. The jury should not use testimony given by a government witness or a property owner witness in respect to other parcels of land. Since to do so would permit the jury to consider evidence on a parcel of land which the counsel for the property owner did not have the right to cross examine the witnesses who gave the testimony.

IV. Did The Trial Court Err In Refusing The Appellant's Motion For A New Trial Since There Was No Evidence To Justify The Jury's Verdict In Respect To The Appellant's Properties?

Appellant contends that it was error for the Trial Court to refuse to grant Appellant's motion for a new trial. This Court has held in the case of Mayme J. Riley v. District of Columbia Land Agency, No. 12782 decided May 17, 1956 that upon a motion for a new trial both the proceedings and the award were open for a searching examination in the light of the principles and circumstances set forth in that case.

Furthermore, it must be kept in mind that the verdicts returned by the jury were the minimum amount deposited by the Appellee on three of the properties and only one piece of property received an increase of Two Hundred ($200.00) Dollars. Yet, the figure returned in respect to this one piece of property was not testified to as to any of the witnesses in the case. The entire case of the Appellee is predicated upon the testimony of two expert witnesses which based their appraisal of the property on the reproduction cost method. In fact the calculations on this method were nothing more than the rule of thumb cubic foot basis less depreciation. Mr. Throckmorton did not even give the calculations to show what the cubic footage basis was in respect to these properties. The Appellant relies upon the

decision of Mayme J. Riley v. District of Columbia Redevelopment Land Agency, No. 12782, decided April 22, 1957, wherein this Court stated that there is no necessary relationship between reproduction cost and market value. Appellant contends that it established the value of the property by the sale of the property itself for Eight Thousand Nine Hundred Fifty ($8,950.00) Dollars and its expert testified as to the comparable properties and the value of these properties being approximately Six Thousand Four Hundred ($6,400.00) Dollars. This difference between the actual sale of the properties itself and the Appellant's expert witnesses' testimony explains the difference between the credit sale and the cash value of the property and was testimony of the highest regard. Since there was no competent testimony introduced by the government to establish the fair market value of this property it becomes quite evident that the jury in this case totally disregarded the testimony and having the pleadings of the case before it, which included the amount deposited on each property into the registry of court accepted the amount deposited in every case in respect to the Appellant's properties with the exception of the one property which had an enclosed bath. In regards to this property the jury increased the amount of the deposit Two Hundred ($200.00) Dollars. However, none of the witnesses either for the government or the property owners had testified in respect to this amount. Appellant contends that the verdict as rendered by the jury clearly shows that it was predicated upon sympathy and prejudice and was not founded upon the facts of the case and that the court was in error in not granting Appellant's motion for a new trial.

V. Did The Trial Court Err In Refusing To Require That Government Counsel's Remark Be Retracted?

In the argument to the jury the government counsel made the following statement (App. 53):

> "Yes, you have to have the personal knowledge that his expert witnesses had, because they were in this group that was dealing in it. Dealing in what? Dealing in human misery. That is what they were dealing in."

Appellant contends that in viewing the entire case upon its motion for a new trial the Court had further reason and justification for granting the Appellant's motion for a new trial and included therein was the fact that government counsel had classified all the property owners as "dealers in human misery". It is true, of course, that such remarks to the jury are not testimony but it has generally been held that there must be some foundation in the facts of the trial to be justified in making of such a remark. It must also be kept in mind that in this case the attorney making the remark was an attorney for the Department of Justice. In a recent case of Willie Lee Stewart v. United States of America, No. 12944, decided April 18, 1957 this Court brought forth the fact that statements made to a jury by a prosecutor in a criminal case are more prejudicial because their impact on the jury is always more or less strengthened by his official position and quoted Commonwealth v. Cook, 86 Ky. 663. The position of a prosecutor in a criminal case is somewhat similar to the position occupied in this case by the Department of Justice attorney who is representing an action wherein the property owners under the Constitution are guaranteed to receive just compensation, and it is felt that a jury respects the position occupied by the counsel for the Government and that such remarks tend in a great degree to prejudice the case against the property owners. When the entire case is reviewed in retrospect it becomes very obvious that this remark played a great part in denying to the property owners a fair and impartial trial on the question of just compensation.

CONCLUSION

For the foregoing reasons the Appellant urges that the judgment of the United States District Court be reversed and set aside and that this cause be remanded to the United States District Court for a new trial.

Respectfully submitted,

A. SLATER CLARKE
210 Shoreham Building
Washington, D. C.
Attorney for Appellant

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APPENDIX FOR APPELLANT

1646 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed June 30, 1955]

UNITED STATES OF AMERICA, Plaintiff, v. 177 PARCELS OF LAND IN THE DISTRICT OF COLUMBIA, BERNARD R. EDWARDS, JR., ET AL., AND UNKNOWN OWNERS, Defendants.	District Court Docket No. 10-55

COMPLAINT

1. This is an action of a civil nature brought by the United States of America at the request of James Ring, Executive Director of the National Capital Housing Authority, for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of March 1, 1929, as amended, c. 416, 45 Stat. 1415 et seq. (U.S. Code Title 40 Sec. 361 to 384); the Act of June 12, 1934, c. 465, 48 Stat. 930 as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186 (D.C. Code Title 5 Sec. 103 to 116); and the U.S. Housing Act of 1937, approved September 1, 1937, as amended, c. 896, 50 Stat. 888 (U.S. Code Title 42 Sec. 1501 et seq.).

3. The use for which the property is to be taken is the provision of decent, safe and sanitary dwellings for families of low income in the District of Columbia, pursuant to said Act of June 12, 1934, as amended (Supra), and the U.S. Housing Act of 1937, as amended (Supra).

4. The interest in the property to be acquired is an estate in fee simple absolute.

5. The property so to be taken is described in the Schedule "A" hereto attached.

6. The persons having or claiming an interest in the property whose names are now known are:

* * * * * * *

1659

PARCEL 18-A

Gale Realty Corp., a Delaware corporation

Martha Perkins, Tenant

Charles Perkins, Tenant

A. Slater Clarke, Trustee

Irvin C. Breneman, Trustee

PARCEL 18-B

Gale Realty Corp., a Delaware corporation

David McConte, Tenant

Mamie McConte, Tenant

A. Slater Clarke, Trustee

Irvin C. Breneman, Trustee

PARCEL 18-C

Gale Realty Corp., a Delaware corporation

Fred Whiting, Tenant

Ruth Whiting, Tenant

A. Slater Clarke, Trustee

Irvin C. Breneman, Trustee

PARCEL 18-D

Favian Brown

Beatrice Brown

A. Slater Clarke, Trustee

Irvin C. Breneman, Trustee

Gale Realty Corporation

* * * * * * *

1710 [Filed Feb. 28, 1956]

JUDGMENT

Upon consideration of the verdict of the jury returned herein on February 16, 1956, awarding compensation for Parcels 5, 18-A, 18-B, 18-C, 18-D, 45, 46, 56-A, 56-B, 171-A, 171-B, 171-C, 171-D, 171-E, 171-F, 171-G, 206, 207, 208, 209, 223 and 224, as described in the complaint and proceedings in this cause;

And it further appearing that pursuant to Section 10 of the Act of March 1, 1929, c. 416 (45 Stat. 1415), the United States of America, petitioner in this cause, did on the 30th day of June, 1955, file a declaration of taking in this cause in respect of said parcels, and did on the same day deposit in the registry of the court for the use of the persons entitled thereto the estimated compensation for each of said parcels as stated in said declaration of taking, whereby the title to each of said parcels became vested in the United States of America in fee simple absolute on said June 30, 1955;

WHEREUPON, it is this 28th day of February, 1956, by the Court ADJUDGED, ORDERED AND DECREED that the awards for said parcels and each of them be and the same is hereby finally ratified and confirmed; and

IT IS FURTHER ADJUDGED AND ORDERED that the parties owning said parcels respectively and entitled to the sums awarded by said verdict as just compensation for the same have judgment against the United States of America for the amounts of said awards respectively as follows:

PARCEL	LOT	SQUARE	AWARD	DEPOSIT	DEFICIENCY
*	*	*	*	*	*
18-A	62	592	$4,025.00	$4,025.00	
18-B	61	592	4,650.00	4,450.00	200.00
18-C	60	592	4,025.00	4,025.00	
18-D	59	592	4,025.00	4,025.00	
*	*	*	*	*	*

1711 AND IT IS FURTHER ADJUDGED AND ORDERED that the United States of America deposit into the registry of the Court the difference between the amounts of said awards and the amounts deposited with the declaration of taking as the estimated just compensation for said parcels, together with interest at the rate of six per centum per annum on the amounts of the deficiencies as to each parcel from June 30, 1955, the date of the filing of the declaration of taking, to the date of the deposit.

/s/ F. DICKINSON LETTS
Judge

Presented by:

/s/ Ralph A. Ricketts,

Attorney, Lands Division
Department of Justice

1712 [Filed Mar. 6, 1956]

MOTION FOR A NEW TRIAL

Comes now the defendant Gale Realty Corporation, by its attorney, and moves this Honorable Court for a new trial in the above-entitled cause and for reasons therefore states:

1. That the trial court erred in limiting the defendant's expert witness to the use of only comparable sales of which he had personal knowledge and by requiring a previous showing that the said sales were free and willing sales between buyer and seller while, on the other hand, the Government expert witnesses and other property owners' expert witnesses were allowed to testify as to any and all sales without qualification.

2. That the Court erred in refusing counsel for the defendant the right to cross examine Government witnesses in regard to their testimony.

3. The Court erred in refusing the defendant's request for

Instructions Two, Three, Four, Five and Six.

4. That the Court erred in accepting the jury's verdict in regard to these properties since the said verdict was totally inadequate, contrary to the evidence and based upon sympathy and prejudice.

5. That the Court erred in not striking the remarks of the Government Counsel in his argument to the jury wherein he referred to the defendants as "dealers in human miseries".

1713 6. And for such other and further reasons as may be advanced to the Court at the hearing of this Motion.

/s/ A. SLATER CLARKE
Attorney for Defendant, Gale

* * * *

(CERTIFICATE OF SERVICE)

1718 [Filed June 14, 1956]

ORDER

This cause coming on for hearing on the 31st day of May, 1956, upon motions of defendants Gale Realty Corporation and Henry P. Staley for a new trial and after arguments by counsel for both plaintiff and the defendants, and it appearing to the Court that the verdict is not contrary to law and there being sufficient evidence to support the verdict, the motions for a new trial are hereby this 14th day of June, 1956, OVERRULED AND DENIED.

/s/ F. Dickinson Letts
Judge

* * *

1719 [Filed July 31, 1956]

NOTICE OF APPEAL

Notice is hereby given this 31st day of July, 1956, that the Gale Realty Corporation hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 28th day of February, 1956 in favor of the United States of America, plaintiff and against said Gale Realty Corporation, defendant.

/s/ A. SLATER CLARKE
Attorney for Defendant

* * *

* * *

DEFENDANT'S EXHIBIT 4

[Filed September 26, 1956]

The District Title Insurance Co.
The Lawyers Title Insurance Co.
The Washington Title Insurance Co.
1413 Eye Street, N.W.
Washington 5, D. C.

Parcel 198

Purchase

JAMES WHITLOW &
REBECCA P. WHITLOW

Case No. 368628
S.D. No. 198765
July 27th, 1951

In the Matter of Lot 26 Square 541

* * * * * * *

	Loan Price			6950.00
Fire & Ext'd Coverage Ins.	$2700.00 paid to	@	$ 3 yrs.	8.78
	Appraisal Fee			5.00
	Commission			
	Conveyancing paid		* *	
	Deposit to Sellers		* *	100.00

	First Deed of Trust Perpetual * *		2700.00
	Interest accrued from * * @ %		
	Bonus		
Def. Purch.	Second Deed of Trust to Sellers		3350.00
	Interest accrued from @ %		
	Deferred payments		
	Taxes paid to 6/30/51		
	Taxes accrued no adjustment		
	Front foot benefit		
	Town taxes		
	Special Assessments		
	Rent paid to no adj. at $__ per Mo.		
	Notary Fee on deed	1.00	
	Title Insurance (Including examination) (Record (Title 44.00 ((Full Coverage		
	Tax Certificate & Tax Service	2.50	
	Preparing Deed $7.50; 2 Trusts $15.00 Release $	22.50	
	Recording 1 Deed $1.80; 2 Trusts $9.80 Release $	11.60	
	Noting and examining conveyances		
	Notary fee & Notary Service 2 Trusts	1.50	
	Settlement fee	11.00	
	Registering Notes		98.05
	Revenue Stamps Federal $4.95 State $	4.95	
	Survey (on equity)		
	Binder		
	Service Charge		
	Balance due to settle		912.83
		7062.83	7062.83

Approved /s/ James Whitlow

DEFENDANT'S EXHIBIT 5

[Filed September 26, 1956]

National Capital Housing
Authority
Washington, D. C.

February 21, 1955

Dear Resident:

The National Capital Housing Authority intends to purchase and remove the buildings from approximately five blocks in the Southwest section of Washington, located between Second and Third Streets, Eye and M Streets, and Delaware Avenue and Canal Street, and to build on the cleared site 456 low-rent houses and apartments for low-income families. The building in which you are now living is one of those which will be removed and the Authority will begin negotiating for its purchase.

To aid you in locating other living quarters the Authority has opened a Relocation and Site Management Office at 400 L Street, Southeast, telephone - LIncoln 4-1355. This office, under the supervision of Mr. George W. Miner, will be open to serve you every day except Saturdays, Sundays, and holidays, from 9:00 a. m. to 4:30 p. m. Employees of the Relocation Office will visit your home within the next few days and ask you certain questions. We shall appreciate your cooperation with the staff, for this will help you and your neighbors.

Often strange stories are started about the supposed action of a Government agency which buys property and plans to tear it down so as to build on the cleared land. If you are worried by any such stories or if you have any questions as to the Authority's work in this neighborhood, please let Mr. Miner or other members of his staff know about them in order that you can be given the correct information.

Low-income families who are to move from the houses bought by the Authority will have an equal chance for vacancies in public housing with families who are being removed from old houses in the Southwest by the Redevelopment Land Agency and with families displaced by other public action. If your income is too high to allow you to become a

tenant of public housing, our Relocation Office - with the cooperation of the Redevelopment Land Agency - will assist you wherever possible in finding a vacancy in good private housing.

The Relocation Office also will tell you about the arrangements that the Authority will make after it acquires the property for your continued use of your present home until you move. These arrangements will include an agreement with you for the payment of a fair rent. If you decide to make your own arrangements for another place to live, please let our Relocation Office know, either in person or by phone, and send your keys to the office at 400 L Street, S. E.

We are sure that you will find the Relocation staff and other employees of the Authority ready to assist with your relocation problems. With your cooperation the Authority will be able to successfully carry out its plans for rehousing you and your neighbors.

Sincerely

/s/ James Ring
Executive Director

DEFENDANT'S EXHIBIT 9

[Filed September 26, 1956]

THE DISTRICT TITLE INSURANCE COMPANY
THE LAWYERS TITLE INSURANCE COMPANY
THE WASHINGTON TITLE INSURANCE COMPANY

SECURED BY DEED OF TRUST

To A. Slater Clarke and Irving C. Breneman, Trustees; conveying lot 59 in Square 592

$4,000.00 Washington, D.C., March 18, 1953

For value received, we jointly and severally promise to pay to the order of Gale Realty Corp., the principal sum of Four Thousand Dollars, with interest from date until paid at the rate of six per centum

per annum.

Said principal and interest being payable in monthly installments of Forty Dollars (with the privilege of making larger payments in any amount), on the 18 day of each and every month commencing on the 18 day of April 1953, and continuing thereafter until paid; each installment when so paid to be applied first, to the payment of the interest on the amount of principal remaining unpaid, and the balance thereof credited to the principal.

And it is expressly agreed that if default be made in the payment of any one of the aforesaid installments when and as the same becomes due and payable, then in that event, the unpaid balance of said principal sum shall at the option of the holder hereof, at once become due and payable, anything above contained to the contrary notwithstanding.

/s/ Favian Brown

No. 1 of 1 /s/ Beatrice W. Brown

Retain this note when paid that the trustees may be satisfied as to its cancellation.

Payments on account of above note and interest, are acknowledged as follows:

Date of Payment	Interest Due	To Principal	Balance Principal Due
April 15, 1953	20.00	20.00	3,980.00
May 18, 1953	19.90	20.10	3,959.90
June 19, 1953	19.80	20.20	3,939.70
July 22, 1953	19.70	20.30	3,919.40
August 19, 1953	19.59	20.41	3,898.99
Sept. 25, 1953	19.49	20.51	3,878.48
October 26, 1953	19.39	20.61	3,857.87
Dec. 1, 1953	19.29	20.71	3,837.16
Dec. 28, 1953	19.29	20.81	3,816.35
Feb. 15, 1954	19.08	20.92	3,795.43
March 29, 1954	37.95	2.06	3,793.38

Date of Payment	Interest Due	To Principal	Balance Principal Due
May 11, 1954	37.93	2.07	3,791.31
June 16, 1954	18.96	21.04	3,770.27
August 20, 1954	18.85	21.15	3,749.12
August 20, 1954	18.85	21.15	3,727.97
Oct. 5, 1954	18.64	21.36	3,706.61
Sept. 7, 1955	222.40	3,706.61	- 0 -

(Reverse side of Exhibit 9)

Pay To The Order Of: LENOX C. CHEW & HELEN R. CHEW

WITHOUT RECOURSE TO U.S.

GALE REALTY CORP.

By /s/ George Basiliko, Pres.

Proceeds placed to the credit of
Lenox C. Chew and Helen R. Chew
in the National Bank of Washington
Washington, D.C.

DEFENDANT'S EXHIBIT 10

[Filed September 26, 1956]

THE DISTRICT TITLE INSURANCE COMPANY
THE LAWYERS TITLE INSURANCE COMPANY
THE WASHINGTON TITLE INSURANCE COMPANY

SECURED BY DEED OF TRUST

To A. Slater Clarke and Irvin C. Breneman, Trustees;
Conveying Lot 59 in Square 592

$4,850.00 Washington, D.C., March 18, 1953

For value received, we jointly and severally promise to pay to the order of Gale Realty Corp., the principal sum of Forty-eight

Hundred and Fifty Dollars, with interest from date until paid at the rate of six per centum per annum.

Said principal and interest being payable in monthly instalments of Twenty-nine and 50/100 Dollars (with the privilege of making larger payments in any amount), on the 18 day of each and every month commencing on the 18 day of April 1953, and continuing thereafter until paid; each instalment when so paid to be applied first, to the payment of the interest on the amount of principal remaining unpaid, and the balance thereof credited to the principal.

And it is expressly agreed that if default be made in the payment of any one of the aforesaid instalments when and as the same becomes due and payable, then in that event, the unpaid balance of said principal sum shall, at the option of the holder hereof, at once become due and payable, anything above contained to the contrary notwithstanding.

/s/ Favian Brown

/s/ Beatrice W. Brown

No. 1 of 1

Retain this note when paid that the trustees may be satisfied as to its cancellation.

Payments on account of above note and interest, are acknowledged as follows:

Date of Payment 1953	Interest Due	To Principal	Balance Principal Due
April 15	24.25	5.25	4,844.75
	24.22	5.28	4,839.41
	24.20	5.30	4,834.17
	24.17	5.33	4,828.84
	24.14	5.36	4,823.48
	24.12	5.38	4,818.10
	24.09	5.41	4,812.69
	24.06	5.44	4,801.79

Date of Payment 1953	Interest Due	To Principal	Balance Principal Due
	24.04	5.46	4,796.30
	24.01	5.49	4,790.78
	23.98	5.52	4,785.23
	23.95	5.55	4,785.23
	29.50	--	4,785.23
	49.29	11.71	4,763.52
	29.50	---	4,763.52
Sept. 1954	29.50	---	4,763.52
9-13-55	20.15		

$20.15 is applied to interest due on 9-13-55 by the Lawyers Title Ins. Corp.

/s/ E.L. Lyon, Escrow officer

(Reverse side of Exhibit 10)

Pay to the order of

WITHOUT RECOURSE TO US

Gale Realty Corp.

By /s/ George Basiliko, Pres.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

* * * * *

401-A [Filed February 13, 1956] Washington, D.C.,
Thursday, January 12, 1956

* * * * *

504 PAUL PERUZZI

a witness called on behalf of Gale Realty Corporation, was sworn, and testified as follows:

DIRECT EXAMINATION

* * * * *

515 BY MR. CLARKE:

Q. Now, Mr. Peruzzi, was there any substantial change in the property, the condition of the property, from the time that you first inspected this property on January 7, as against the time that you inspected the property on July 7, both in the year 1955? A. Yes, I would say there was a definite change that had taken place between that period.

Q. Would you describe to the Court and Jury exactly what changes took place that you know of, sir. A. Among the changes which I did note were those particular houses had fences; they had sort of awning type covering over the main entrance door to each house; and actually, they appeared to be in a good state of repair, as far as the interior was concerned. I mean, the paper and painting seemed to be in good condition on that particular date.

Then again when I re-inspected the property around the 7th of July, there were no fences there, for one thing. And all the awnings had been removed from the doors. And that one particular house was vacant -- 1035 was vacant, and of course, it showed evidence that

516 somebody had gone into to work on the house, as far as marking up the walls, destroying the plaster, and things of that nature.

Q. Now, when you refer to awnings that were on the front of these houses, over the door, I think you mentioned, exactly what type of awnings was that, do you recall? A. It appeared to be an aluminum

awning over each house.

Q. Do you recall what type of fence was located at the front of these properties? A. That was a wooden fence.

Q. Pardon? A. A wooden fence.

Q. Was it a completely wooden fence, is that correct? A. As far as I remember. It might have been some iron along the side.

Q. Now, I show you three deeds -- excuse me -- two deeds, and ask you to examine those. Please don't mention the prices, and I ask you whether you considered those deeds which concerned two of these properties in question in arriving at the value which you have placed on these properties? A. Well, I have taken these into consideration.

THE COURT: I think you better have them marked for identification.

MR. CLARKE: Yes, I will. Suppose we mark them at once --

517 all of them.

THE COURT: Well, he testified as to those.

MR. CLARKE: Just those two.

THE COURT: What number will they take?

MR. CLARKE: Number 2, Your Honor.

THE COURT: There are two of them -- two and three?

THE DEPUTY CLERK: Yes, Your Honor.

(Two deeds were marked for identification as Gale Realty Exhibits Nos. 2 and 3.)

THE COURT: The record will show that the witness has testified to Gale Realty's 2 and 3.

BY MR. CLARKE:

Q. I show you this paper and ask you, can you identify that, sir? A. Yes.

Q. And that, would you identify the paper further, as to what it represents? A. Well, this represents --

Q. Without the price being mentioned. A. This represents a comparable in reference to my recent appraisals on these properties in question.

Q. And do you have personal knowledge of that transaction which I have asked you to look at this settlement sheet and identify? A. Yes, I do.

518 Q. And what is this paper? Is this a settlement of the property in question, or property that you used as a comparable? A. Yes, it is.

Q. Might I ask, to what property does this settlement sheet pertain? A. That pertains to 813 Third Street, S.W.

THE COURT: And that will be Gale Realty No. 4.

(Settlement sheet for 813 - 3rd St., S.W., was marked for identification as Gale Realty Exhibit No. 4.)

BY MR. CLARKE:

Q. Now, Mr. Peruzzi, would you tell the Court exactly what knowledge you have concerning this settlement sheet, and the sale which it purports to represent? A. You mean also mention the price?

Q. Don't mention the price at this time, no, sir. A. Well, the property there at 813 Third Street, S.W., actually was sold by Mr. Basiliko, and I happened to be at the title company when that particular piece of property was settled.

Q. And did you have any financial interest in that transaction? A. I did not.

Q. And what was your position as to why you were at the title

519 company? A. Well, I happened to be at the title company that day on business; in fact, doing business with Mr. Basiliko on another matter, and I sat in on that particular settlement.

Q. And did you have a conversation with the purchasers, Mr. and Mrs. Whitlow? A. Yes, I did.

Q. And did you discuss with them the purchase of that property? A. Well, I did, and they seemed to --

Q. Just answer the question. Did you -- A. Yes.

Q. Have there been other occasions on which you have testified in this Court concerning this sale? A. Yes, I believe it was the first of last year.

Q. And in your opinion was this not a sale between a free and willing purchaser and a free and willing buyer both of which were under no compulsion to either sell or buy the property? A. Well,

MR. RICKETTS: Now just a minute, if Your Honor please. I am going to object to any answer to that. I don't see where the foundation has been yet laid that this witness knows that it was a willing purchaser and a willing seller. He just happens to be at the title company.

520 THE COURT: I think he will have to show what he knows first. Something about the contract -- conversations you heard or had with the people.

MR. CLARKE: Well, if the Court please, in the interest of time, like I brought out, he has testified concerning this transaction on two other occasions as being a free and willing sale, and has been both readily admitted by Government and defense counsel.

MR. RICKETTS: We are trying a different one, Slater.

THE COURT: That relates to some other case, not this one.

MR. CLARKE: Yes.

BY MR. CLARKE:

Q. Did you have occasion to discuss this sale of the property with Mr. Basiliko? A. Yes, I did.

Q. Would you tell us what your conversation was with Mr. Basiliko? A. Well, in discussing the property there at 813 Third Street, S.W. --

Q. Please don't mention the price at this time. A. Mr. Basiliko and I had discussed that he was selling this particular piece of property, and he indicated to me that the seller was well pleased with the transaction that they had made, and felt fully satisfied that they were making

521 a good deal there on the property.

MR. RICKETTS: Now, if Your Honor please, that part about the seller, I should think should go out. That is hearsay. What Mr. Basiliko told him about someone else.

MR. CLARKE: Maybe I can clarify it, Your Honor.

THE COURT: All right.

BY MR. CLARKE:

Q. You stated that you were present at the time of settlement. Did you observe Mr. and Mrs. Whitlow executing papers to effect the purchase of this property? A. Yes, I did.

Q. Did they in any way object to any of the papers being signed? A. No, everything seemed to be very harmonious.

Q. Did they indicate any reluctance to purchase this property? A. There didn't seem to be any reluctance on anybody's part there.

Q. Have you since the date of the settlement of this property heard Mrs. Whitlow on any occasion state that she was a free and willing purchaser of this property? A. I understood she gave that testimony on the last case in Court.

522 MR. RICKETTS: If Your Honor please, I move that that be stricken as not responsive.

THE COURT: You say you understood that she so testified. That doesn't mean that you heard it? A. No, sir.

THE COURT: You did not hear it?

THE WITNESS: I did not hear her say it, no, sir.

THE COURT: All right. Objection sustained.

BY MR. CLARKE:

Q. Did you hear her state anything at the title company in regards to the fact that she was a free and willing purchaser, or Mr. Whitlow, at that time? A. Well, she -- I had spoken to her at the title company about the property, and she indicated to me that she was very well satisfied with the purchase that she was making at that time.

MR. CLARKE: I will ask your Honor at this time that this exhibit now be introduced into Court. This Defendant Gale Realty's Exhibit No. 4 for identification.

MR. RICKETTS: I object to it -- to the introduction of this exhibit and to the entire testimony of this witness, because he was not a party to this sale. He was just someone that happened in the building; stood by and perhaps heard this or that, and the Government wishes to object to it.

THE COURT: Objection overruled. What is the number?

523 MR. CLARKE: Number 4, Your Honor.

THE COURT: Gale Realty Exhibit No. 4 will be received.

(Gale Realty Exhibit No. 4 for identification, was received in evidence as Gale Realty Exhibit No. 4.)

MR. RICKETTS: It seems to me, Your Honor, that the best evidence which is always put in Court -- the best evidence to prove that this was a willing purchaser and a willing seller would be to bring the parties themselves here.

MR. CLARKE: May I answer that, Your Honor, by saying that both parties are deceased.

MR. RICKETTS: That answers it.

THE COURT: Well, Mr. Ricketts, let's dispense with their presence, what do you say?

MR. RICKETTS: I'm afraid we will have to, Your Honor.

THE COURT: The objection is overruled.

MR. RICKETTS: If Your Honor please, may I make this observation. Doesn't the transaction speak for itself? If they entered into it --

THE COURT: I think there is some merit to what you say, but this may add something to it.

BY MR. CLARKE:

524 Q. Now, directing your attention to the sale of this property from George Basiliko to James Whitlow, I ask you, do you recall the sales price of that property? A. The sales price was $6950.

MR. RICKETTS: If Your Honor please, the Government reserves an objection to him testifying to the price.

I can't see where the foundation has been laid that he has personal knowledge of that.

THE COURT: Objection overruled.

BY MR. CLARKE:

Q. Would you kindly tell us what was the sales price of that property? A. That property was purchased for $6950, and the purchasers put in $1 000 cash.

Q. Would you describe this property that they purchased to the

Court, please? A. Well, this property compares very much so with the properties in question. It has six rooms; water; electricity. One thing it did lack, it did not have any gas in there. Outside toilet.

Q. What was the dimensions of the house and lot? A. The dimensions of this particular house, 813 Third Street, was 12.98 by 61.31; contained approximately 795.80 square feet.

Q. Do you consider that property comparable to the property
525 about which you are testifying today? A. Yes, I would say there is a very close comparison there.

Q. Now, would you kindly give us your estimate -- pardon me, your appraisal of the property known as 1029 Second Street, S.W., predicated upon your comparable sales method?

THE COURT: Now, which one is that -- A, B, C, or D?

MR. CLARKE: That is D, Your Honor.

THE COURT: Yes, all right.

THE WITNESS: I appraised 1029 Second Street, S.W. for the total sum of $6413.

BY MR. CLARKE:

Q. How did you break your appraisal down? A. Well, I valued the ground at approximately $1.75 a square foot which brought it to $1113. I valued the improvements at $5300.

Q. Would you kindly go on to the next one -- 1031?

MR. RICKETTS: Would you give me that valuation again, please?

THE WITNESS: The total valuation would be $6413.

MR. RICKETTS: Thank you.

BY MR. CLARKE:

Q. Would you kindly go on to the premises, 1031, which is parcel -- A. I valued 1031 Second Street, S.W., at $6413.

526 Q. Would you break that down? A. I appraised the ground at $1.75 a square foot -- $1113; and improvements at $5300.

Q. Going on to Parcel 18-B, which is 1033 Second Street, S.W. A. I appraised 1033 Second Street, S.W. at $6813. I valued the ground at $1.75 a square foot, making it $1113; and the improvements at $5700.

Q. Now, kindly go on to the next one, 1035 Second Street, S. W. A. 1035 Second Street, S. W., $6413. The ground I valued at $1. 75 a foot, or total of $1113, and the improvements at $5300.

Q. Now, what in your opinion is the fair rental value of each one of these properties? Kindly take them separately, unless you have one figure for all of them. A. Well, a fair rental value there, I'd say, they should rent for a range from $62. 50 a month to a high of about $69. 50 per month.

And, of course, in reaching a happy medium there, they would possibly average out about $64 or $65 a month.

Q. Predicated on the fair rental value, and using the income method, or capitalization method, would you tell the Court what figure you arrived at in appraising these properties? A. Well, with the exception of 1033, I felt that 1029, 1031, and 1035 should rent for about
527 $64 a month. And using a 100 times basis to secure at least a ten percent return on your investment, that would bear the property out at about $6400 in price.

Q. What was your last word? A. In price.

Q. And what did you do in regards to 1033, Parcel 18-B. A. Well, 1033 Second Street actually had the inside bath which would make a difference in the rent per month, and I figured that that should bring at least four or five dollars more. In fact, it should bring about $69 a month.

Q. Based on that rental -- A. That should bear the property out at $6900 in total appraisal.

Q. Do you know who is the owner of these properties at this time? A. Yes.

Q. Who is the owner? A. The Gale Realty Corporation.

Q. Do they own all of these properties? A. Yes.

Q. Does that have any effect, the fact that the ownership of all properties are in one ownership, does that have any effect on your ap-
528 praisal of these properties? A. None whatsoever.

Q. What is the best use to which this property here could be put

at the time of the taking by the Government? A. Aside from securing monthly rentals on the individual properties, you do have an assembly there of 48 feet which would lend itself to a small apartment house site.

Q. And you say 48 feet -- how do you arrive at that? A. In other words, you have four properties with a 12 foot width.

Q. That would give you a frontage of 48 feet? A. Yes.

Q. Would that in any way change the value which you have placed on the lands previously? A. Well, a larger assembly of properties would tend to increase the valuation of the property somewhat.

Q. Did you in your appraisal of this property allow any increase for the assembly factor? A. No, I did not.

MR. CLARKE: No further questions.

* * * * * * *

556 Washington, D.C.,
Friday, January 13, 1956

* * * * * * *

557 FAVIAN BROWN

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Would you tell the Court your name, please, sir? A. My name is Favian Brown.

Q. Mr. Brown, keep your voice up so everyone here can hear what you say. Where do you reside? A. 807 E Street, S.W.

Q. And where are you employed, Mr. Brown? A. Regal Wholesale Cleaners and Dyers.

Q. Did there come a time, Mr. Brown, that you purchased the premises known as 1029 Second Street, S.W.? A. There did.

MR. CLARKE: For the Court's information that is referred to as Parcel 18-D.

THE COURT: D?

MR. CLARKE: Yes, sir, that is right.

558 BY MR. CLARKE:

Q. Mr. Brown, I show you this paper and ask you can you identify this paper, sir? A. I see my signature and my wife's signature there. Yes, I can.

Q. And is this a sales contract which you signed for the purchase of the house at 1029 Second Street, S.W.? A. It is.

MR. CLARKE: Will you mark this, please.

(Sales Contract, 1029 Second Street, Southwest, was marked Gale Realty Corporation Number 6 for identification.)

BY MR. CLARKE:

Q. I ask you to --

THE COURT: You mean Gale Realty exhibit number 6?

MR. CLARKE: Gale Realty exhibit number 6, yes.

BY MR. CLARKE:

Q. I ask you to examine this paper, sir, and tell me if you can identify that. Examine all the pages, please. A. I can identify that.

Q. I ask you is this your signature appearing on the last page of this? A. That is my signature.

Q. And is this not the deed of trust note that you signed?

559 A. That is.

Q. In regards to the purchase of this house? A. That is right.

Q. Now, I ask you to identify that paper and examine it please.

MR. CLARKE: I ask that this deed of trust be marked as Defendant Gale Realty exhibit number 7 for identification.

(Deed of Trust, Defendant Gale Realty Corporation was marked Number 7 for identification.)

BY MR. CLARKE:

Q. Does your signature appear on that paper? A. That is my signature.

Q. Is this not the deed of trust of the second trust note in regards to the purchase of the premises? A. That is.

Q. I will ask you to examine this paper.

MR. CLARKE: Will you mark this, please.

(Second Trust Note was marked Gale Realty Corporation Number 8 for identification.)

BY MR. CLARKE:

Q. Does your signature appear on this paper you are now examining? A. That is my signature.

Q. Is this the actual note which you signed for the indebtedness
560 for the purchase of this house? A. That is.

Q. I will ask you to examine that, sir.

MR. CLARKE: Please mark this.

(Note was marked Gale Realty Corporation Number 9 for identification.)

BY MR. CLARKE:

Q. Does your signature appear on that paper? A. Yes.

Q. I will ask you if this is not the second trust realty note you signed in regards to the purchase of your home. A. That is it.

MR. CLARKE: I ask that this be marked ten.

(Realty Note was marked Gale Realty Corporation number 10 for identification.)

BY MR. CLARKE:

Q. Sir, what was the purpose or reason why you purchased this house at 1029 2nd Street, S.W. A. Well, at the time we looked we already had an apartment on U Street. My sister is in New York. Her sight was going bad so we felt like if we had a larger place near my job, which is in Southwest, 635 Maine Avenue, why eventually after we get straightened out we could have her with us. So that is why we had taken that property.

561 Q. Did you buy this house to use as a home or did you buy it as an investment? A. I bought it to use it as a home.

Q. And were you willing to pay the price that you agreed to pay on this house? A. I was.

Q. Were you under any compulsion or did anyone force you to

purchase this house? A. No, sir. We happened to see it advertised so I went to buy it.

Q. Now, how long did you live there, Mr. Brown? A. About the first part of '53 until the latter part of '54.

Q. And did you make any improvements to these premises while you were living there? A. I did.

Q. What did you do to them, sir? A. Well, I painted and fixed the woodwork. The floor was bad. We did that. Fixed the floor.

Q. Do you recall the cost of what it cost you to paint and fix the flooring? A. I don't recall the exact cost but I imagine around altogether from the time I lost to help the fellow in the business around about $400; between $400 and a little more.

Q. Now, during the time that you resided at this address in South-
562 west did you observe any physical changes in the neighborhood?
A. Well, yes, I did.

Q. Would you tell the Court exactly what you observed. A. Well, towards lately the people commenced getting a little nervous because they were taking --

THE COURT: He is asking for physical changes in the neighborhood.

THE WITNESS: I don't understand what you mean.

MR. CLARKE: Maybe I will reword it, Your Honor.

BY MR. CLARKE:

Q. You said you noticed physical changes, is that correct? Did you notice any changes in the condition of the neighborhood? A. Does that relate to the property or the people?

Q. Why, to the property. A. Oh, sure.

Q. What did you notice? A. Well, I noticed where property was run down people was moving out and things like that.

Q. When you first went down there to live in Southwest do you recall whether or not there were any vacancies on the street on which you moved? A. I think I was the last one to get the house. I think there was no vacancy on that street at all.

563 Q. Do you recall seeing any vacancies there from the time that you moved in in the Spring. I believe you testified to, of 1953 until the middle of 1954? A. See any changes?

Q. See any vacancies. A. I didn't see any vacancies there.

Q. When did you first notice any vacancies? A. I first noticed a vacancy, I can't just explain the exact time but it was during the time they was taking possession of a block below me, you see, and then the people in my block commenced moving, getting nervous, so I thought I would stay it out. At that time I had no reason to believe --

Q. Now, do you recall when you moved from those premises? A. I moved the first part of last year.

Q. The first part of last year? That would be 1955? A. Yes.

Q. I show you Gale Realty Defendant exhibit number 5 and ask you whether or not you have ever seen that exhibit before or a similar exhibit before?

MR. CLARKE: If the Court please, may I substitute a clear exhibit so it will be easier for him in case he wants to read it. The Government suggested that earlier.

THE COURT: Yes, you may do so.

BY MR. CLARKE:

564 Q. You may read this one which is the same exhibit. A. Yes, I have seen this before.

Q. Do you recall where you saw it before? A. If I am not mistaken I saw it at my residence.

Q. And do you recall how you came to see that? A. Well, in fact my wife was approached first and they was telling us about they were going to take our neighborhood.

Q. Would you tell the Court -- let me ask you this: Did there come a time when you conveyed this property and gave up this property and gave it back to the Gale Realty Corporation? A. There did.

Q. And I ask you, can you identify this, sir? A. This is what I signed.

Q. Pardon me? A. This is what I signed.

Q. Is that the deed conveying the property back? A. That is it.

Q. And that is your signature and your wife's signature? A. Yes, and that is my wife's signature.

MR. CLARKE: I will ask this to be marked as Defendant Gale Realty Corporation exhibit 11.

(Deed conveying property back to Gale Realty Corporation marked Number 11 for identification.)

565 BY MR. CLARKE:

Q. Now, Mr. Brown, tell the Court in your own words why you decided to give up these premises and to convey them back to the Gale Realty Corporation. A. Well, the reason I did that was because we had the understanding that it was no use to investing any more money in it, see. My idea was to repair it gradually. I didn't have much money. I would just take and do a little bit at a time.

So one evening when I came home my wife told me there was a couple of fellows had been there, you see, and they claimed they was from Government and that the houses would be tore down, so there was no use of us putting any more money in it at all.

Then a little later than that I happened to be home when three of them came -- one did the speaking -- and I was speaking about putting, thinking about putting a bath in. He said, well, he said, "We are from the Government. They are coming through here and they are going to take all of this section, you see, so I advise you not to invest any more in it."

Q. When did this occur, sir? A. That occurred, I think it was in the fall, see.

Q. Of what year? A. Of '54.

566 Q. Now, I ask you, sir, after you purchased this house and became obligated on the real estate notes for the purchase of this house, did you make regular payments on those notes? A. I did.

Q. And are those payments reflected here on these two exhibits which I show you, being Defendant's Exhibits Numbers 9 and 10? Do you have your payment book there? A. Yes.

Q. These are your payment books where you received receipts for payment? A. Yes, those are receipts there. I haven't them all but I can get them.

MR. CLARKE: I am going to ask that this be marked as Gale Realty Corporation Exhibit Number 12.

(Receipt Book, First Trust Note, was marked Defendant Gale Realty Corporation Number 12 for identification.)

BY MR. CLARKE:

Q. And is this book here (indicating) your receipt book for your payments on your second trust? A. That is it.

MR. CLARKE: I ask that this be marked Number 13.

(Receipt Book, Second Trust Note, was marked Defendant Gale Realty Corporation Number 13 for identification.)

567 MR. CLARKE: If the Court please, at this time I would like to offer into evidence Defendant Gale Realty Corporation Exhibits Numbers 6 through and inclusive of Defendant's Exhibit Number 13.

THE COURT: Yes. Do I hear an objection?

MR. RICKETTS: No, Your Honor.

THE COURT: Gale Realty Exhibits 6 through 13 are received.

(Documents previously marked Defendant Gale Realty Corporation Exhibits Numbers 6 through 13 for identification were received in evidence.)

MR. CLARKE: Now, may I point out to the Court, Your Honor, that the books which I have just given to the jury, that the first book represents the payments on the first trust, and the second book the payments on the second trust, and all papers are coming in that order. I have no other questions of this witness.

THE COURT: Mr. Ricketts, you may examine.

* * * * * * *

797 Washington, D.C.,

Tuesday, January 17, 1956.

* * * * * * *

813 WILLIAM SYLVESTER HARPS

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * *

837 THE WITNESS: * * * It was my opinion, based on the history of this particular property, based on the fact also that immediately east of this particular property and to the east of Square 591 we have a park, and no people living in it. To the east of that is a junior high school, which occupies a block and a half. To the east of that is a large playground, which occupies four blocks. Nowhere are there people in that group.

To the south of it and to the east of the southeast of it, there are blocks, every one of which I happened to appraise, going down to M Street and in which the quality and quantity of the income in there would not warrant having any type of commercial property at this particular corner.

* * * * * * *

883 MR. WILKES: No further questions, if Your Honor please.

THE COURT: Will there be further redirect?

MR. CLARKE: I was going to ask a few questions.

THE COURT: Were you interested in this property?

MR. RICKETTS: I was going to ask that myself, Your Honor.

MR. CLARKE: If The Court please --

THE COURT: He hasn't testified with respect to your property.

MR. CLARKE: I would only like to ask him questions generally pertaining to his familiarity with the area.

THE COURT: You will have to do that when he talks about your property.

MR. CLARKE: Your Honor, he has talked about the area, and I would just like to ask him a couple of questions concerning the area.

MR. RICKETTS: If Your Honor please, I object to that. Mr. Clarke has no interest in this particular piece of property, which

this witness has testified to.

MR. CLARKE: This witness has appraised 200 pieces of property.

THE COURT: I will have to ask you to wait and you question the witness that appears on your property.

* * * * * * *

964 CHARLES C. KOONES

a witness called on behalf of the Government, after having first been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

MR. WILKES: I would like to clarify one further point, if I may. It is my understanding that Mr. Koones is not going to testify as to any of my parcels, is that correct?

MR. RICKETTS: That is correct.

MR. WILKES: I presume you will adhere to the same ruling with respect to Mr. Clarke, and that I will not be given an opportunity to cross-examine this witness by reason of the fact that he represents none of my parcels?

Would Your Honor instruct the jury that this is not to be taken as a part of my case?

THE COURT: I think that the jury knows that. They don't have to be instructed on what is obvious.

MR. WILKES: If Your Honor please, with respect to anything which might touch on the neighborhood, I reserve, then, the right to cross-examine Mr. Koones.

THE COURT: Very well. Mr. Ricketts, you may proceed.

965 BY MR. RICKETTS:

Q. Will you state your full name? A. Charles C. Koones.

Q. What is your occupation? A. I am a realtor.

Q. Where are you located? A. In the Southern Building, this city.

Q. Will you state your past experience and training in this field, and what organizations you are a member of, and from what people you receive your directions to appraise? A. First, I am President

of the real estate firm known as Koones and Montgomery, who conduct a general real estate business; also loan correspondent of the State Mutual Life Assurance Co.

I am a former president of the Washington Real Estate Board.

I am, at the present time, Director of the National Association of Real Estate Boards.

I am a former president of the D.C. Chapter of the American Institute of Real Estate Appraisers.

I have specialized in appraising for the past number of years.

I have also testified before this Court in condemnation cases.

I have been appointed by the United States District Court for the
966 District of Columbia to value property in inheritance cases.

I have appraised for a number of institutions in the city; attorneys; individuals; and a number of banks, including the Riggs National Bank, the American Security and Trust Company, Commerce Bank, National Metropolitan Bank, and Guarantee Trust Company of New York.

I have also appraised for the number of financial institutions or lending institutions, such as the Home Life Insurance Co. of New York; State Mutual Life Assurance Co.

I have appraised in this area for the Redevelopment Land Agency, and for the National Capital Housing Authority.

I have also appraised for the National Capital Park Planning Commission; Department of Justice; and a number of other Federal Agencies.

I have appeared bef ore the Tax Court of the United States.

Q. You are familiar with the various methods used in appraisal work? A. Yes.

Q. Have you engaged in the selling of real estate in the District of Columbia? A. To some extent. It isn't our main business at all.

Q. Have you engaged in the building business in the District of
967 Columbia? A. Yes, I am an associate -- in fact, an officer -- in the Hillcrest Development Co., which is mainly owned by our firm, and which is under direct supervision, though, of my associate, Mr. Montgomery.

Q. And you are familiar with building costs? A. I am.

Q. And you keep yourself abreast of those building costs as they change? A. I attempt to, yes.

MR. RICKETTS: That is all.

THE COURT: Mr. Clarke, do you question the qualifications of this witness?

MR. CLARKE: I am afraid I will have to, Your Honor.

THE COURT: Very well.

PRELIMINARY CROSS-EXAMINATION

BY MR. CLARKE:

Q. Have you ever owned any property in the southwest area of Washington in the last five years? A. No.

Q. Have you ever owned any at any time during your life, in the southwest area? A. Not that I recall.

Q. Have you ever acted as a real estate broker or agent in any
968 transactions in regards to either buying or selling property in the southwest area in the last five years? A. No.

Q. Going back further, have you ever, since 1947 to date, have you ever engaged as broker or agent in a transaction in the southwest area? A. Yes.

Q. When was that? A. 1947.

Q. 1947. And was that property located in what is commonly referred to down there as Area B and Area C, which the Government agencies are acquiring? A. No.

Q. Was this a house or was that property commercial property? A. It was land -- unimproved land and zoned for commercial use.

Q. I see. Now, Mr. Koones, the fact that you are a member of the Washington Real Estate Board, and former President and Director, does not necessarily imply - reflect as to your qualifications as to being an appraiser of real estate, does it? A. Other than a general background of well regard, that is all.

969 Q. Have you ever had any occasion in the last five years to appraise property in the southwest area, other than for Government agencies?

A. Yes.

Q. And if you recall, when did you do that, sir? A. Three to four years ago, I did it on two different occasions.

Then, there might have been some smaller instances where I did it for the Court.

Q. Was that property that you appraised at that time either in the area B or C? A. It would be in Area C, as I recall.

Q. Was that property houses or commercial or land? A. They were residential properties.

Q. Now, without revealing your client's name, could we have the type of person you appraised that for, such as a bank or individual? A. I would have to almost reveal the property, if it is all right. It was the Washington Sanitary Housing Co., who built extensively in the southwest area for the working classes. I think it started in 1900. A. Now, the construction corporation that you mentioned, that you hold an officership in, does that engage in building any houses that are in any way similar to the houses here in the southwest area?

970 A. No.

Q. Do any of these banks and other financial institutions and insurance companies that you mentioned that you appraised for, have any loans in the southwest area, to your knowledge? A. I couldn't answer that, sir.

Q. To your knowledge? A. No.

Q. Do you recall ever having to appraise any property for any of those clients of yours in the southwest area during the last, say, six years -- since 1950? A. No, I don't recall any.

Q. Thank you.

MR. CLARKE: I have no further questions.

THE COURT: The Court thinks the witness is qualified. You may proceed, Mr. Ricketts.

MR. RICKETTS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. RICKETTS:

Q. Now, Mr. Koones, directing your attention to Parcel 18-A, which is 1030 - 2nd Street, S.W., did there come a time when you made an appraisal of that parcel? A. Yes.

Q. First, let me ask you, before I go in any deeper, what did you do to prepare yourself to arrive at your evaluation? A. I ac-

970-A quainted myself with sales in the area. I inspected the area. I inspected the property; examined it as to condition. I also acquainted myself with rentals being paid for more or less comparable property, and ascertained certain amenities in the area, such as schools, churches, shopping facilities, public transportation.

Q. Did you make an examination and inspection of this property? A. Yes.

Q. When was that? A. It was one time, or the last time was in November, latter part of November, or maybe the first part of December, 1955.

Q. Now, was there one prior to that? A. There was one prior to that which was in June of 1953. And I made an inspection of the area around June, 1955.

Q. At any time during the month of June 1955, did you examine with respect to this property? A. Not in detail. I examined the neighborhood.

Q. Did you go down where this property was and look at it? A. Yes, I did.

Q. From the outside? A. Yes.

Q. Your inspection of June 1953, what did that disclose as to its

971 condition? Excuse me -- strike that.

First, tell me what is the description of this property? A. Are we referring to Parcel 18-A?

Q. Yes. A. The address is 1035 - 2nd Street, S. W., and is known as lot 62, square 592.

The lot size is 12 feet front by 53 feet in depth; the area, 636 square feet; the improvements was a brick dwelling, two-story house, contained six rooms.

The condition was fair to poor; had stove heat; electricity; yard toilet; one-tap sink -- kitchen sink, in other words, water was in the house.

Formerly there had been a metal roof or canopy over this house, but it was missing at the time of that inspection.

I noticed, also, that the floors were sagging and that the rear trim was in poor condition.

The front brick and trim had been painted and was in good condition, and the house was, as I said, from fair to poor.

MR. CLARKE: May I ask the witness, or Mr. Ricketts, as to what date we are referring -- which inspection?

THE WITNESS: That was in '53.

971-A BY MR. RICKETTS:

Q. Have you anything further to add to the condition of this house?

MR. CLARKE: I object to that -- it is a leading question.

THE COURT: Objection overruled. You may answer,

THE WITNESS: Well, it had a metal roof; down spouts which were in good condition.

BY MR. RICKETTS:

Q. Now, directing your attention to June 30, 1955, what valuation did you put on this parcel? A. $4025.

Q. Now, at the time that you put that valuation as of June 30, 1955 -- strike that. You say you made a later inspection? A. Yes.

Q. Than 1953? A. Yes.

Q. And that was sometime in November, 1955? A. Yes.

Q. Were you able then to make an inspection? A. No, the house was boarded up and apparently had been vacant and vandalized.

Q. When you arrived at your valuation -- strike that. Did you take into consideration that the United States was acquiring property

972 in that area in your evaluation? A. No. I did not. When I say, when I check my sales, my sales went back prior to the Government activity -- the acquisition, and I did not change my value from my first

inspection to the second inspection, even though the property was vandalized but I took that into consideration, that the Government was acquiring property in that area, and it had a deteriorating effect on the property because of vandalism.

In other words, I didn't depreciate the property because of that.

Q. On June 30, 1955, what did you consider the highest and best use to be made of that property? A. Residential use. What it had been used for.

Q. Now, will you explain to the Court and jury what method you used to arrive at $4025? A. I first -- all of my methods were a guide for my final determination.

I estimated the reproduction value of the building less depreciation and added to that my estimate of the value of the land. That gave me one method.

I ascertained what I felt this property would rent for and attempted the valuation on the capitalization method.

That was somewhat of a guide, although it was not used as my final
973 determination, but gave me some determination.

I informed myself of sales in the area, and that acted also, as a guide.

As I stated before, my final determination was based on what my opinion the property itself in an open market without any conditions of being taken by the Government in the area, would be worth.

Q. Now, this valuation of $4025 that you placed on it, as of June 30, 1955, did you consider that in terms of cash? A. Yes.

Q. Will you explain your reproduction cost method? A. I estimated 10,100 cubic feet, placed a value of 63¢ per cubic foot new on the property. That gave me a rounded figure of $6350.

The depreciation and obsolescence was estimated at 50% or $3175, would be my depreciated value of the improvements.

The land having a 12 foot front and only a 53 foot depth, containing 636 square feet, I appraised that at $850, which is at the rate of $70 per front foot, or $1.33 per square foot. That gave me a value of $4025.

Q. That added to the reproduction cost of the building new, less --
A. Less depreciation.

Q. Now, I understand that you also considered comparable sales
974 in the area? A. Yes.

Q. As a guide? A. Yes.

Q. Are you prepared to testify as to the comparable sales you used? A. I am, yes.

Q. And if you are called upon, you have those ready to testify to, is that right? A. Yes.

Q. For the sake of brevity and saving time, Mr. Koones, you appraised Parcels 18-A, B, C and D, did you not? A. I did, sir.

Q. And what methods did you use for B, C, and D? A. The same methods.

Q. Now, what value did you arrive at for 18-B, as of June 30, 1955? A. $4450.

Q. Would you give a brief description of that property, please?
A. To save time, that property was similar to 18-A, with the exception that it did have a three piece bath in the house; not an outside toilet. It did have, also, a gas range.

That is it briefly. I can go ahead and say it had electricity and
975 that, if you want me to go all the way through, but it was similar.

Q. What was the condition of the property? A. It was fair to poor.

Q. Going forward to C -- A. I beg pardon, it was in better condition than the one previously mentioned, that is 18-A.

Q. Going forward to 18-C, what value did you place on that?
A. The same as 18-A, being similar in almost every respect -- $4025.

Q. And you would have the same answer for the description and condition of this property as you had for A, is that correct? A. That is right, sir.

Q. Going forward to 18-D, what value did you place on that?
A. $4025. And that was similar to 18-A in practically every respect.

Q. And your answer to the description and condition would be the

same as Parcel 18-A? A. That is correct, except I will say that the kitchen had been newly painted in this particular case, and they had venetian blinds.

Q. And you used all three approaches to guide you in the determination of value of all of these parcels? A. That is right, sir.

976

Q. And what method of approach did you finally decide upon for B, C, and D? A. Well, my final determination worked out to the highest value was the physical value, or would be, in my opinion, would be the highest value, and I gave it that.

From a capitalized value, my estimate of value would be lower, based on rentals in the neighborhood, and the market value in the price range, had been maybe $4000 on that basis. So I gave it $4025, so it was based on the physical value.

Q. Now, does your answer to the highest and best use -- would it be the same on 18-B, C, and D? A. That is right -- residential use.

Q. These comparable sales that you were able to discover to help you in guiding you towards the value, were they cash sales?
A. The sales I used in helping me, yes, were based on cash.

MR. RICKETTS: I think that is all, Your Honor.

THE COURT: Mr. Clarke.

CROSS-EXAMINATION

BY MR. CLARKE:

977

Q. Mr. Koones, the only comparable sales you have are just cash sales, is that correct? A. I have cash sales and worked out to where there were resales, too, but in my consideration of the value of these properties I used the cash sales which is my concept of what a fair market value would be.

Q. Cash sales is your concept of the fair market value, is that correct? A. Yes.

Q. Did these houses, Parcel 18-A -- you may have overlooked it -- doesn't that have gas in it? A. I believe you are right.

Q. You mentioned that the aluminum canopy over that door was missing.

Was that missing in your inspection in June of 1953 or in November and December of '55? A. No, it was missing in 1953.

Q. '53? A. Yes.

Q. Was it there in November of '55? A. I didn't see it there then.

Q. Well, do you recall when you did see it? A. I don't recall ever seeing it.

Q. How do you know it was missing? A. Because I don't recall seeing it, sir.

Q. How do you know the canopy was ever there? A. That I

978 can't answer, but the other three houses had the canopy on, and I thought maybe this house did too.

Q. Then you did see canopies on the other houses? A. That is right.

Q. And they were aluminum awnings? A. That is correct.

Q. Did you see those on those other houses in January of '53? A. Yes.

Q. Do you recall whether or not you saw them there in November and December '55? A. Yes, I think they were, but they were in poor condition.

Q. They may have been there? A. Yes.

Q. Now, you stated that in considering -- one of the steps of your appraisal method, was to consider the area to ascertain about the utilities and facilities in the area. Did you not find this area to be an area that was convenient to public transportation for the lower income classes? A. Yes.

Q. Was not this area convenient, also, to adequate shopping centers? A. Shopping areas on 4th Street and 7th Street, yes, and

979 neighborhood stores, too.

Q. Have you ever, in your experience, sir, had occasion to participate, or do it individually, in the construction of houses of this

type in the City of Washington? A. No.

Q. Then, the figure that you used of 63¢ a cubic foot, is that a figure that you predicated on your experience, or just how did you get that? A. Background knowledge.

Q. Do you have any actual comparison where you could show to this jury that a house similar to that house could today be constructed for 63¢ a cubic foot. A. No, because I don't believe -- I don't know anyone who would construct a house similar to this, but based on what information I have on new houses, and working it down, that would be my opinion of what it would cost to reproduce it.

Q. Have you discussed your appraisal of this property with any other appraisers in the city? A. No.

Q. Did you -- did anyone assist you in doing the work, in arriving at your appraisal? A. Yes, I had one -- someone helped me in cubing the property.

Q. Did you consider the fact that all four parcels are owned by
980 the same entity? A. Yes.

Q. When did you learn that fact, sir? A. In June, around June of 1955.

Q. '55? A. Yes.

Q. Was there any change in your appraised figure that you made on these parcels in June of '53, as compared to the re-appraisal that you made of these properties in '55? A. No.

MR. CLARKE: I have no further questions, Your Honor.

MR. RICKETTS: I have none, Your Honor.

THE COURT: You may be excused, Mr. Koones.

THE WITNESS: Thank you, Your Honor.

MR. RICKETTS: May the witness be excused?

THE COURT: Yes, Mr. Koones will be excused.

(Whereupon, the witness left the stand, and withdrew from the Courtroom.)

MR. RICKETTS: Will you call Mr. Throckmorton, please.

THE DEPUTY MARSHAL: He isn't here, Mr. Ricketts.

MR. DONAHUE: I just talked to Mr. Throckmorton on the phone and he should be here momentarily.

MR. RICKETTS: He had been notified some time ago to be here.

981 May I respectfully suggest a five minute recess, Your Honor?

THE COURT: Is this Mr. Clarke's property?

MR. RICKETTS: Yes.

THE COURT: Very well. The Jury may be at ease until the witness arrives.

(Whereupon, the Court took a short recess, after which, the following occurred:)

Whereupon,

WILLIAM M. THROCKMORTON

A witness called by the Government, after having first been duly sworn, took the stand, and testified as follows:

DIRECT EXAMINATION

MR. WILKES: Now, if Your Honor please, may I inquire as to whether or not Mr. Throckmorton is going to proceed to testify as to any of my parcels?

MR. RICKETTS: If Your Honor please, that is why I am standing here now, to tell you.

Mr. Throckmorton will testify to property which Mr. Clarke represents.

THE COURT: Who represents?

MR. RICKETTS: Mr. Clarke.

Also, some property represented by Mr. Wilkes; and also the property represented by Mr. Melrod.

982 MR. WILKES: Thank you, sir.

THE COURT: Where is Mr. Melrod? I suggest that you save Mr. Melrod's case until he arrives.

MR. RICKETTS: I will do that, Your Honor. I am thinking now of his qualifications -- when I try to qualify him.

THE COURT: Go ahead with your qualification.

MR. RICKETTS: Thank you, Sir.

DIRECT EXAMINATION

BY MR. RICKETTS:

Q. Will you please state your full name? A. William M. Throckmorton.

Q. What is your occupation? A. General real estate and appraisal business.

Q. Where is your place of business? A. 201 Investment Building, 15th and K Streets.

Q. How long have you been so occupied in the District of Columbia? A. Since 1922.

Q. Will you please state your background and experience and the organizations that you belong to, and certain representations that you have concerning your appraisal work? A. I have been in the real estate business since 1922. I have operated my own office in the Investment Building since 1930. For the past 25 years --

983 Q. Excuse me. I don't think Mr. Wilkes hears you. Will you keep your voice up? A. Can you hear me now, Mr. Wilkes?

MR. WILKES: I can from this position, sir.

THE WITNESS: For the past 25 years, I have specialized in sales and appraisal work, although, I have developed subdivisions -- I have done some building.

I have handled rents, property management, etc. In other words, general real estate business.

I represent and do appraisal work for a number of local banks and mortgage houses, including the B. F. Saul Co.; the Berens Co.; the Riggs Bank; the Munsey Trust Co.; the Security Bank, and others.

I represent approximately 15 or 16 out of town insurance companies located in different sections of the country and in Canada, for whom I do appraisal work here, for the purpose of mortgages and sales.

I represent two banks in Baltimore, and several in Philadelphia, and several in New York City.

I am a member of the Washington Real Estate Board; The National

Association of Real Estate Boards; the American Institute of Real Estate Appraisers; the Society of Residential Appraisers; and the American Appraisal Society.

984 Q. Now, Mr. Throckmorton, have you done any appraisal work in the southwest area? A. I have done considerable work in the southwest area, both for the National Capital Housing Authority and the Redevelopment Land Agency.

I have represented the Department of Justice in numerous cases in connection with condemnation court, also property owners -- probably more so than I have testified for the Government.

Q. Have you ever qualified to testify in the District Court here in Washington -- United States District Court for the District of Columbia? A. I have. Not only in the District Court for the District of Columbia, but in Virginia and Maryland, as well.

Q. Have you also qualified to testify for the Government of the District of Columbia in the United States Court for the District of Columbia? A. That is correct.

Q. Are you acquainted with the various methods of appraisal work? A. I think so.

Q. Are you also familiar with building costs? A. Yes.

Q. You keep yourself abreast of the building costs as they rise and fall? A. Very definitely.

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PRELIMINARY CROSS-EXAMINATION

* * * * * * *

990 BY MR. CLARKE:

Q. During the last five years, have you ever had occasion to appraise any property in the southwest area, and I direct your attention generally to the areas referred to as area B and C, which I believe you are familiar with, for any purpose other than for the Government?

991 A. Mr. Clarke, I would say yes over that period of time. I do appraisal work in all sections of the city for various purposes.

Q. In the southwest area, I am referring to. A. Yes, I

understand. I wouldn't want to answer that question one way or the other.

Q. Your recollection at this time -- or do you have any notes with you that would refer to that particular property that you appraised down there? A. No, I do not.

Q. You have no independent recollection at this time? A. No.

Q. Now, during the last five to seven years, have you been engaged either as a builder or in a joint enterprise in the construction of any houses in the Washington area? A. In the Metropolitan area, yes.

Q. The last five to seven years? A. Yes.

Q. Are those houses in any way similar to the houses generally found in the southwest area? A. Not in the slightest.

Q. Are any of those houses row brick houses? A. No.

Q. When you say that you keep abreast of the building costs, do I understand you to imply that you do this in a general way.

992 You couldn't specifically testify as to actual costs of various items of construction, such as building supplies, bricks, etc? A. Well, there are several ways of keeping abreast of it. We naturally take the building costs journals that are available and I also keep in touch with several builders that I consider the foremost builders of the city, and the most reliable to keep a check on what general building costs are, which naturally applies to all material as well as labor costs.

Q. You yourself have not purchased building items that are necessary to build a house during the last three to five years, have? A. No, only the ones that are concerned with the houses that we mentioned.

Q. These builders that we mentioned, are they building in Washington or in the metropolitan area? A. Well, most of the building, as you well know, is in the Metropolitan area. There is very little ground left in the District of Columbia to build on.

The builders I refer to build both in the District of Columbia and in the metropolitan area.

Q. But primarily in the metropolitan area, is that right?

A. That is right.

993 Q. And they are not building row brick houses, are they?

A. There is very little ground left for row brick houses.

THE COURT: The Court thinks the witness is qualified.

MR. RICKETTS: Thank you, Your Honor.

THE COURT: You may proceed.

DIRECT EXAMINATION (Resumed)

BY MR. RICKETTS:

Q. Mr. Throckmorton, directing your attention to Parcels 18-A, B, C and D -- they are 1035, 1029, 1031, and 1033 - 2nd Street. Did there come a time when you made an appraisal of those properties?

A. Yes.

Q. Did you inspect and examine those properties? A. I did.

Q. When was your first inspection? A. Well, this appraisal is dated June 30, 1953, so it was within a period of 45 to 60 days previous to that time.

Q. Did there come another time when you inspected or examined the property? A. Yes.

Q. When was that? A. We have inspected those properties, Mr. Rieketts, on several occasions.

994 THE COURT: Let counsel come to the bench.

995 (At the Bench:)

THE COURT: Mr. Melrod, Mr. Throckmorton will testify as to your properties. I have just heard testimony qualifying him to speak.

MR. MELROD: I accept his qualifications.

THE COURT: Very well.

(End of Bench conference.)

996 (In open Court:)

BY MR. RICKETTS:

Q. My last question was, did you make any other inspections?

A. Yes.

Q. Or examinations of this property? A. Yes.

Q. Were they prior to June 30, 1955? A. Yes. They were

prior and since then, also.

Q. Did you actually get inside of the buildings and inspect and examine them to see their condition on these other occasions? A. That is correct.

Q. Are you able to tell when that was? Now, you first inspected them sometime prior to June 30, 1953? A. That is right.

Q. Then there came times later when you again inspected them prior to June 30, 1955, is that right? A. That is right.

Q. Can you tell us when those times were? A. Well, it was sometime within the 30 days previous to that time. I don't have a recollection of the exact date.

Q. Previous to June 30, 1955? A. That is correct.

Q. On the occasion of your inspection of June 30, 1953, and for the
997 sake of saving time, could you go over your inspection of these four premises and describe the property and its condition as of June 30, 1953, or when you first inspected them? A. Well, the houses were practically all the same with the exception of one, which was number 1033 - 2nd Street, S.W., which had a three piece bath on the 2nd floor. Otherwise, they were row brick houses; two-stories, six rooms; built sometime previous to 1890; stove heat; electricity; and gas was in, but it wasn't connected. The pipe was run in from the street, but it wasn't connected at that time.

Q. Not connected in any of these properties? A. Not connected in any of them. According to my records, in all of them except 1029, and I have no notes on 1029, so I don't know whether the gas was connected in that particular house or not; they all had outdoor toilets, with the exception of one heretofore mentioned.

1029, my notes show that the plaster was soft and scaling throughout; the floor sagged; and rough plaster patches in the front bedroom. It had a frame shed on the rear of no value.

1031, there was poor plaster throughout. That house had been repapered to some extent by the people in there according to what they said.

998 In 1033, which was the house that had the bath on the second floor, the living room and the dining room had been repapered since the purchase; plaster was bad.

The same thing applied to the house at 1035 - 2nd Street.

They were in a little better than the average condition of a great majority of the houses that you found in southwest.

The outside had been painted since they were purchased, and the gasline, as I said, had been run up to the house, but not hooked up.

They were all occupied at that time.

Q. On these inspections of the premises after June 1953, and just before June 30, 1955, did you find any changes in the condition that you have just testified to? A. Well, at that time I think all except one of them had been vacant, and of course, as usually takes place down there after they become vacant, they become vandalized.

Q. Were they vacated prior to June 30, 1955? A. To the best of my recollection they were. There was one of them that was still occupied even two weeks ago.

Q. Directing your attention to June 30, 1955, what valuation did you put on 18-A? A. On which one?

999 Q. On 18-A -- well I will go the other way. You took them in that order. 18-D, which is 1029 - 2nd Street. A. I have them 18-A, B, C --

Q. Do you? A. Yes.

Q. What value did you put on 18-A? A. $4100.

Q. I'll run right through them, now. 18-B? A. $4850.

Q. 18-C? A. $4100.

Q. And 18-D? A. 18-D, $4100.

Q. On June 30, 1955, what was the highest and best use that could be made of that property? A. Single family residential houses.

Q. Will you explain, first, -- let me strike that. First, let me ask you, what did you do to prepare yourself to evaluate this property? A. First, I made a personal inspection of all the properties involved. I naturally made notes of what they contained. I measured the houses --

helped measure them with an assistant that I had with me.

1000 I figured the reproduction cost new; depreciated them to what I thought was the proper amount according to the condition they were then in, and added the land value of each individual lot.

I also made investigation of all the sales that I could find in that area, as well as all in southwest Washington, which I have approximately 200 here, of which I am prepared to testify as to the value of, if I am permitted to do so.

I not only investigated that, but I have the records of each of these individual sales of these particular houses -- the cash sales of them -- of which I am prepared to testify if I am permitted to do so.

And I compared these houses with other houses as near comparable as could be located in addition to the reproduction cost, less depreciation.

Q. Did you consider any other method? A. No. That is all. The rental method I didn't consider, because with that type of property, the rent in that particular section of the city varies too such an extraordinary degree that you can't arrive at any criteria of value from what anything would rent for down there.

1001 Q. All of these 200 sales that you examined the records of, were they all cash sales? A. The sales that I have taken into consideration have been what I consider bona fide sales -- either cash sales, or sales with a sufficient amount of cash to justify a sale.

I have not taken into consideration the extra-ordinary figures that some of these properties have sold for, with $30 or $50 or $75 down -- anything that could be obtained, and anything per month that could be paid -- where they have been so-called sold on that basis, and then foreclosed on and taken back and resold again -- no, sir, I have not considered those sales.

Q. In your examination of these sales, did you discover in the subject property whether there had been any foreclosures?

MR. CLARKE: I object to that question, Your Honor. It is a known fact that a foreclosure is a forced sale, and does not reflect the true value.

MR. RICKETTS: If you bring out the amount of the foreclosure -- I am not bringing that out, sir.

THE COURT: Objection sustained.

BY MR. RICKETTS:

Q. Will you show how you arrived at your reproduction cost on each one of these properties; from your notes will you show how you arrived at your value from the reproduction method? A. I don't
1002 have all of my work sheets with me. I figured these houses all on a square foot basis, and the reproduction cost will -- we'll start with 18-A.

18-A, the reproduction cost was $5889, but I do not have my measurements with me and the square foot rate that I used.

I didn't think it was necessary to have them, because we never used them here before.

Q. What I want you to do is show what your reproduction cost is new, and your depreciation, and the net result, adding the land value. A. The reproduction cost on 18-A was $5889. The value after depreciation was $3239, plus the land value of $850, rounded out to $4100.

Q. What did that land value per square foot amount to? A. We didn't figure the land down as so much per square foot. We figured it as a building site.

Those lots varied in size and width -- width and depth -- and we treated them all as building sites; where the lots were wider, we gave them a higher value, and where they were deeper, we gave them a higher value.

In 18-B, the reproduction cost on that was $6450. That is the house that had the three piece bath on the second floor, which gives
1003 the difference between that particular house and the other three.

The depreciated cost was $3800, plus $850 for the lot -- $4850.

On 18-C, the figures on that are exactly the same as they are on 18-A, -- $3239 depreciated cost, plus $850 for the lot -- a total of $4100. And on 18-D, the same thing applies.

We allowed $750 difference on the house that had the bath in it.

Q. Was your valuation of June 30, 1955 all cash? A. That value was based on a cash sale or equivalent.

MR. RICKETTS: That is all.

THE COURT: Mr. Clarke, you may cross-examine.

CROSS-EXAMINATION

BY MR. CLARKE:

Q. Mr. Throckmorton, directing your attention to Parcel 18-B, do I understand that your appraised value of that property is $4850? A. Yes.

Q. Now, I understand you didn't bring your notes with regards to how you arrived at these reproduction costs, but did I understand you to say that $6450 was your estimate of the reproduction cost of that house? A. Mr. Clarke, what we did, we fixed that on the same basis
1004 as the other houses and then added the difference for the bath, which gave us the valuation of $6400.

Q. $6400 even, is that right? And less your depreciation, what was the figure you arrived at? A. Let me say here, I use even figures, but quite often these figures come out $10, $15, but we round it off to the nearest even figure.

Q. I understand that. After you depreciated that $6450, what figure did you arrive at? A. We didn't depreciate $6450, we depreciated the $5889.

Q. What figure did you arrive at? A. $3239.

Q. And then you added to that the cost of the bath, is that right? A. That is right.

Q. What figure did you arrive at then? A. I have $4000 down here for improvements, so that would be $767 some odd dollars.

Q. You arrived at $4000? A. That is correct.

Q. I misunderstood. I thought you said $3800. I wasn't trying to trap you, Mr. Throckmorton. I was just trying to clarify it.

You mentioned that you examined the property in 1955. Did you
1005 verify that gas had been installed in all of these houses? A. In 1955?

Q. Yes. A. I don't remember whether I did or not.

Q. I see. I believe you stated that when you did see these houses in '55, that three of them were vacant? A. That is the best of my recollection.

Q. You stated as late as a couple of weeks ago, one of them was still occupied? A. I think so, yes.

MR. CLARKE: No other questions, Your Honor.

* * * * * * *

1384 Washington, D.C.

Tuesday, January 24, 1956

* * * * * * *

1483 MR. CLARKE: That will be fine. I will state for the record that I will rely on the instructions as granted by the Court for Mr. Wilkes, but I have in addition thereto, one which I would like to offer, what I originally designated as my instruction No. 2.

1484 THE COURT: Mr. Clarke, it occurs to me that you would take away from the jury their right to consider general testimony as to the conveniences -- schools, transportation, and other matters, that I think they have a right to take into consideration.

MR. CLARKE: If the Court will remember, when the Government first offered Mr. Harps, I sat through his testimony which was with regards to Mr. Wilkes property, but during which testimony he mentioned the neighborhood, and I asked for the right to cross-examine him in regards to that, and Your Honor would not allow me to go ahead and cross-examine him, stating my parcel was not in issue, and I thought I expressed to Your Honor that the sole purpose of my cross-examination was to relate not to any one particular property, but to the neighborhood, and I feel that in view of that ruling, Your Honor, that such an instruction should be given. Otherwise, I have been denied the right to go into this question where other Government witnesses have testified where I was not present.

THE COURT: That situation may have arisen because of the complexity of the case, and the necessity on the part of the Court to

keep the proceedings orderly.

I have heard no objection. Is there an objection?

1485 MR. RICKETTS: I am objecting, Your Honor. I think that part with reference to Mr. Clarke should be to the properties themselves.

MR. CLARKE: I would have no objection to that.

MR. RICKETTS: And further, I think that this limits the jurors to consider the entire area which they have heard testified to. It puts a restriction on them as to what they can consider.

THE COURT: Whose exhibit is this now?

MR. CLARKE: It is mine, Your Honor -- Gale Realty. Gale Realty No. 2.

THE COURT: Gale Realty Prayer No. 2 is denied.

MR. CLARKE: My next prayers of Gale Realty, are prayers Nos. 3 and 4. I will take these two together. They were originally submitted as Staley's prayers 10 and 13, both of which were denied by Your Honor. I am therefore requesting in behalf of Gale Realty that these be granted at this time.

THE COURT: Gale Realty Prayer No. 3 is denied; and Gale Realty Prayer No. 4 is denied.

MR. CLARKE: I now have two more prayers, prayers 5 and 6.

Gale Realty Prayer No. 5 was formerly Staley's Prayer No. 7, which I am now offering, and as I recall, it was withdrawn by Mr. Wilkes, so Your Honor never actually ruled on that one.

1486 THE COURT: Yes, that is correct. This one was withdrawn.

MR. CLARKE: That is what I thought, Your Honor.

THE COURT: Will you see if you can obliterate that marking and mark "denied". Gale Realty No. 5 is denied.

MR. CLARKE: And now I present Gale Realty Prayer No. 6, and if I recall, this was the one that was substituted at the time in place of Mr. Staley's former prayer, and was denied by Your Honor.

THE COURT: Mr. Wilkes had an interlineation that you haven't put in. You can correct your copy if you wish.

MR. CLARKE: If the Court please, may I offer my prayer as it

stands at this time, rather than have the interlineation, because my properties do not pertain to any commercial properties.

THE COURT: Gale Realty Prayer No. 6 is denied.

MR. CLARKE: Thank you, Your Honor. That is all the prayers we have.

* * * * * * *

1498 Washington, D.C.

Wednesday, January 25, 1956

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1573 ARGUMENT ON BEHALF OF THE GOVERNMENT BY MR. RICKETTS

1581 MR. RICKETTS: * * * And you use your judgment why he owns it.

At this time, I want to comment on something that I can't understand as to the arguments here.

Mr. Wilkes would have you believe you can't go to the records and look at the record. They don't tell you anything. You have got to have personal knowledge.

Yes, you have to have the personal knowledge that his expert witnesses had, because they were in this group that was dealing in it. Dealing in what? Dealing in human misery. That is what they were dealing in.

Then we get one of the other attorneys for the owners, Mr. Clarke. He shows you a deal from the record. He relies on it. You don't have to have personal knowledge of this one. It is there.

* * * * * * *

1597 MR. CLARKE: May I at this time make a motion, too, in regards to Mr. Ricketts' statements -- particularly one statement which I think should be retracted. It is the remark he made which applied pretty much in general to everybody, of being dealers in human misery. I think that should be removed from the record.

THE COURT: The Court regards that only as a matter of expression. The jury will decide this case upon the evidence and the law.

1598 Motion denied.

[Filed January 24, 1956]

GALE REALTY INSTRUCTION NO. 2

The Court instructs the jury that in considering the properties represented by Mr. Clarke, they should consider only the testimony submitted by the Government witnesses and Mr. Clarke's witnesses who testified concerning these properties. The Court should not consider testimony submitted by other witnesses, either a government witness or a property owner witness, in regards to other properties. The jury should not compare these properties with other properties in dispute in arriving at their value.

BRIEF FOR THE UNITED STATES, APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,562

GALE REALTY CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals
For the
District of Columbia Circuit
FILED SEP 11 1957
Joseph W. Stewart
CLERK

QUESTIONS PRESENTED

Whether in a jury trial to determine compensation payable for the condemnation of four houses reversible error was committed in

(1) Alleged exclusion of evidence of comparable sales where no such evidence was offered.

(2) Restriction of cross-examination of a government witness testifying as to other parcels involved in the consolidated proceeding.

(3) Refusal to give a certain instruction to the jury or refusal to compel government counsel to retract a remark made during oral argument.

(4) Denying the motion for a new trial, the verdict being within the range of expert testimony.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES, APPELLEE

JURISDICTIONAL STATEMENT

This proceeding was brought by the United States at the request of the National Capital Housing Authority to condemn some 177 parcels of land located in southwest Washington (App. 1–2).[1] Jurisdiction of the district court was invoked under the Act of March 1, 1929, as amended, 45 Stat. 1415, 16 D. C. Code 619–644, and other statutes (App. 1). Jurisdiction of this Court is invoked under 28 U. S. C. sec. 1291.

STATEMENT OF THE CASE

This is an appeal from a judgment determining the amount of compensation payable for the condemnation of four parcels of land owned by the Gale Realty Corporation and designated parcels 18 A, B, C and D. A jury trial was held on January 9 through 13, 1956, January 16 through January 19, and January

[1] Appellant's Appendix will be designated "App." while the appendix to this brief will be referred to as "Gov. App."

23, 24 and 26. Verdicts were returned on February 16 embracing 22 parcels (App. 3). Appellant's timely motion for a new trial was denied by order of June 14, 1956 (App. 4–5), and this appeal followed (App. 6). It is the only appeal now pending from this judgment, the appeal taken by another party therefrom having been dismissed.

The evidence and proceedings as related to the four parcels here concerned may be briefly summarized as follows:

A short opening statement was first made by government counsel covering all parcels (Tr. 51–54)[2] and by landowner's counsel, including Mr. Clarke for Gale Realty (Tr. 57–59). January 10 and 11 and part of January 12 were devoted to evidence on behalf of owners of other properties. Then Paul Peruzzi was called as an expert witness on behalf of Gale Realty Company. After qualifying as an expert, he described the four properties as being two-story row houses at 1029, 1031, 1033 and 1035 Second Street S. W. (Tr. 511–512). Then there were introduced two deeds with regard to sales of two of the condemned houses (App. 15). A settlement sheet with regard to a comparable sale was then admitted in evidence (App. 15–16). There followed further testimony and discussion concerning this transaction (App. 16–19) and the Government's objection to admission of the evidence was overruled (App. 18–19). Mr. Peruzzi valued three of the properties at $6,413 and the fourth at $6,813 (App. 20–21).

An official of the National Capital Housing Authority was called as a witness to identify a letter sent to residents of the condemned area and at the end of his testimony, Gale Realty Exhibits 2 and 3, being deeds of sales of parcels 18 C and 18 D were introduced without objection (Gov. App. 11). The only other witness for Gale Realty was Favian Brown who had bought parcel 18 D but later conveyed it back to Gale Realty (App. 22–28). This closed Gale Realty's case and there followed evidence on behalf of other landowners.

The first witness for the Government was William Harps who testified concerning parcel 5 (Tr. 815–859). He was cross-examined at length as to his qualifications by Mr. Wilkes, counsel for other landowners including the owner of parcel 5,

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[2] References to portions of the stenographer's transcript of the proceedings which have not been printed are indicated by "Tr."

whose objection was overruled (Tr. 843) and he was likewise cross-examined at length as to his valuation by Mr. Wilkes (Tr. 847–882). At this point the court refused to permit Mr. Clarke to question him about his familiarity with the area (App. 29).

Two appraisers for the Government valued appellant's properties. Charles Koones valued three houses at $4,025 each and the fourth at $4,450 (App. 35). He employed the reproduction less depreciation approach, the capitalization of rent approach and the comparable sale approach (App. 36). Cross-examination was very brief (App. 38–40). The other government appraiser, William Throckmorton, valued three of Gale Realty's houses at $4,100 and the fourth at $4,850 (App. 47). He also used the three standard approaches to value (App. 48). Here also, cross-examination by Mr. Clarke was very brief (App. 50–51). Mr. Throckmorton thereafter testified at length both on direct examination and cross-examination concerning other parcels (Tr. 1009–1152) and additional evidence was presented as to other parcels (Tr. 1153–1402).

At the conclusion of the evidence the instructions to the jury were discussed at length, certain objections being taken by Gale Realty's counsel (Tr. 1419–1493) followed by the arguments of counsel (Tr. 1499–1629). A motion of Mr. Clarke made at the end of the Government's argument that a remark of government counsel should be retracted was overruled (App. 53–54). The instructions (Gov. App. 13–19) were given to the jury on January 26, 1956, and it returned its verdict on February 16, 1956. To appellant the award was $4,025 each on parcels 18 A, C and D and $4,650 on parcel 18 B (App. 3). Thereafter, appellant's motion for a new trial was denied.

SUMMARY OF ARGUMENT

I

Appellant's contention that its evidence as to comparable sales was unduly restricted cannot be the basis for reversal since all such evidence offered by appellant was admitted. In fact, the trial court never imposed the limitations alleged by appellant.

The refusal to permit appellant's counsel to cross-examine the Government's witness who testified only as to other par-

cels was a permissible exercise of the Court's discretion under the circumstances of this consolidated trial, a procedure to which appellant did not object. Moreover, there is nothing to indicate prejudice to appellant in refusal to permit this cross-examination as to the witness' familiarity with the area, since he did not value appellant's property.

II

The Court's instructions to the jury correctly stated the applicable principles to be applied in determining just compensation. The Court correctly denied appellant's requested instruction to the effect that in reaching their verdict as to appellant's properties, it should not consider testimony as to other properties. This would have withdrawn all testimony concerning the general area, its conveniences, etc. And the requested instruction was not directed at the testimony of the one witness appellant's counsel sought to cross-examine, but generally at all evidence in the case. Here again there is nothing to indicate prejudice could result from the failure to so instruct the jury.

The failure of the Court to direct government counsel to retract a remark made during argument to the jury cannot justify reversal under the circumstances, especially when appellant did not urge a mistrial at the time.

III

The verdict is supported by substantial evidence and is, therefore, in this Court conclusive of the facts. Appellant's criticisms of the government experts' valuations are not well taken. Moreover, they present purely factual matters which should have been presented to the jury by cross-examination or argument and, therefore, raise no issue of law for this Court to decide.

ARGUMENT

I.

NO REVERSIBLE ERROR WAS COMMITTED BY THE TRIAL COURT AS TO THE ADMISSION OR EXCLUSION OF EVIDENCE

A. No Evidence of Comparable Sales Offered by the Appellant Was Excluded.—Appellant asserts that the testimony

of its expert as to comparable sales was restricted by requiring personal knowledge that the sale was not forced but that such limitation was not imposed on other experts for both landowners and the Government later in the trial (Br. 7–8). The fact is that such limitation was never imposed in this trial by Judge Letts. Thus the evidence was admitted as to every sale mentioned by Mr. Peruzzi. Two of them were of the houses being valued (Gale Realty Exhibits 2 and 3, App. 15, Gov. App. 11). The settlement sheet of the comparable sale, Gale Realty Exhibit No. 4, was also admitted (App. 19). No other exhibit nor testimony concerning a comparable sale was offered by appellant. Clearly the Court cannot be charged with error in excluding evidence never offered and appellant's point II (Br. 7) presents no ground for reversal.[3]

B. The Restriction Upon Cross-examination Did Not Constitute Prejudicial Error.—As has been the case with many recent condemnation cases in the District of Columbia, many parcels were here consolidated for a single trial before a single jury. See, e. g., *Mayme Riley* v. *District of Columbia Redevelopment Land Agency*, U. S. App. D. C.—, — F. 2d — (1957); *District of Columbia Redev. L. A.* v. *61 Parcels of Land*, 98 U. S. App. D. C. 367, 235 F. 2d 864 (1956). Appellant did not below and does not now object to such consolidation, which, we believe, is an eminently practical way of handling this litigation and is within the discretion of the Court. Cf. *Atlantic Coast Line R. Co.* v. *United States*, 132 F. 2d 959, 962 (C. A. 5, 1943). However, appellant now complains of the Court's refusal to permit cross-examination of William Harps. Mr. Harps testified only as to parcel 5, and

[3] It was appellant's counsel who first introduced the question of whether the comparable sale was free of compulsion (App. 17). Consistently throughout the trial Judge Letts admitted testimony of expert witnesses as to the sales they relied upon as comparable (e. g., Tr. 1061–1065, 1069, 1164–1166, 1178–1179). He was thus following the general rule that neither the hearsay nor best evidence rules bar such expert testimony but the question of coercion, etc., can be explored on cross-examination. *District of Columbia Redev. L. A.* v. *61 Parcels of Land*, 98 U. S. App. D. C. 367, 235 F. 2d 864 (1956); see *United States* v. *Lowrie*, C. A. 4, decided July 6, 1957.

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not as to any of appellant's parcels. He was cross-examined both as to qualifications and as to his valuation by Mr. Wilkes representing the owner of parcel 5. Mr. Clarke made no claim of special relationship of Mr. Harps' testimony to his properties. He made no claim that Mr. Wilkes' cross-examination of Mr. Harps had been inadequate or incomplete. He simply said, "I would only like to ask questions generally pertaining to his familiarity with the area" (App. 29).

A trial court has, of course, wide discretion in determining the scope of cross-examination, 2 Jones, on Evidence (4th Ed. 1938), sec. 389, p. 736; 3 Wigmore, Evidence (3rd Ed. 1940), sec. 944; *Glasser* v. *United States,* 315 U. S. 60, 83 (1942); *Cade* v. *United States,* 213 F. 2d 138 (C. A. 4, 1954); *United States* v. *Manton,* 107 F. 2d 834, 845 (C. A. 2, 1939), cert. den., 309 U. S. 664. There was, we submit, no abuse here. To permit the examination sought by Mr. Clarke could have produced confusion and would tend to make a consolidated trial very difficult, if not impossible, if every landowner is to cross-examine every witness testifying as to parcels not his own.

Moreover, there is nothing to indicate wherein appellant might have been prejudiced by the ruling. Appellant had ample opportunity to show the features of the general area. Since Mr. Harps did not value appellant's properties the extent of his familiarity with the area had no bearing on appellant's case. Appellant made no offer to show in what particular it was prejudiced or in what manner the area was misdescribed. The lack of prejudice in regard to such general descriptive matters is plainly demonstrated by the facts (1) the jury in these condemnation proceedings is composed entirely of property owners within the District, 16 D. C. Code, sec. 629, often referred to as a "blue ribbon" jury and (2) they viewed the properties. Having in mind the small size of the District, every juror necessarily has at least a general idea of the nature of any area thereof and by the view, was given factual proof of the particular facilities in the neighborhood of the condemned area. In these circumstances, we submit that applicable here is the statement in *Garber* v. *United States,* 145 F. 2d 966, 971 (C. A. 6, 1944), that "A molehill

does not become a mountain even though it appears such through the partisan binoculars of counsel."

II.

NO REVERSIBLE ERROR WAS COMMITTED IN CONNECTION WITH THE ARGUMENTS ON INSTRUCTIONS TO THE JURY

A. *Denial of Appellant's Requested Instruction No. 2 Was Not Reversible Error.*—The instructions to the jury with regard to the measure of just compensation and similar matters (Gov. App. 13–19) correctly stated the law. Appellant makes no complaint of the instruction given. Its sole complaint in this regard was the refusal to give its requested instruction No. 2 (App. 54) to the effect that in reaching their verdict as to the properties represented by Mr. Clarke it should not consider testimony in regard to other properties. The Court's reason for declining to give this instruction was that it would exclude from the jury's consideration general testimony as to conveniences available, schools, transportation and the like. Obviously such factors should be taken into account. And the fact that, in its discretion, the Court refused to permit cross-examination of Mr. Harps by Mr. Clarke, Mr. Wilkes already having cross-examined the witness at length, does not, we submit, justify an instruction that the jury should disregard these factors.

Here again, there is nothing to indicate wherein appellant was prejudiced by the denial of the instruction. No claim is made that the surroundings were misdescribed or that the jury was, in any particular, given an erroneous impression of those matters. In addition, the requested charge was not limited to Mr. Harps' testimony. It embraced all other evidence in the case. But appellant made no objection to the consolidated trial nor did it seek to cross-examine any other government witness testifying as to other parcels. This itself constitutes sufficient reason for denying the requested instruction.

B. *The Failure to Require Government Counsel to Retract a Remark Made in His Argument to the Jury Was Not Reversible Error.*—Appellant's attempt to create reversible error out of the reference of government counsel to dealing in human

misery plainly lacks merit. In the first place, a more complete statement (Gov. App. 11–13) than the excerpt printed by appellant (App. 53) shows that remark was addressed to Mr. Wilkes' client, Mr. Staley, and not to Gale Realty Corporation or its officers. The statement was made in the context of a review of a series of transactions tending to justify the conclusion and, as the Court said (App. 53), that was "only a matter of expression." Certainly the "blue ribbon" jury would so understand it.

Moreover, appellant did not in the District Court believe this was serious enough to justify a new trial. It did not ask for a mistrial. It merely asked that the statement be retracted (App. 53). It cannot, we submit, be now used to justify a new trial after the verdict has disappointed appellant.

III.

THE VERDICT, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE, IS CONCLUSIVE OF THE FACTS

Relying solely on the majority opinion of the three-judge court of May 17, 1956, in *Mayme J. Riley* v. *District of Columbia Redevelopment Land Agency*, appellant argues for a broad review of the District Court's failure to grant a new trial (Br. 9–10). That opinion was withdrawn. None of the opinions rendered upon the hearing before the full bench of the *Riley* case assert such a broad scope of review. The writers believe that the briefs and memorandum filed in the *Riley* case conclusively show that the facts are not reviewable by this Court in condemnation proceedings just as they are not reviewable in other civil proceedings nor by other courts of appeals in condemnation cases. The sole question is whether there is evidence to support the award. For elaboration of this matter we respectively refer to the *Riley* case, especially the Agency's brief as appellee, pages 5–6, its petition for rehearing, pages 1–4, and its answer to new material introduced by Marvin J. Sonosky, *Amicus Curiae*.

In this case there was ample evidence to support the award as the summary of the evidence in the Statement, *supra*, p. 2–3, shows. Contrary to appellant's assertion (Br. 9) that the government appraisers based their appraisal on reproduction cost,

their testimony was that they followed all three accepted approaches to value. Appellant says, as to each expert, "he failed to reveal any comparable sales to the Court" (Br. 4, 5). Appellant could have easily found out what they were upon cross-examination. For obvious reasons, no such cross-examination took place.

Appellant's present argument and reliance upon statements in one opinion of the *Riley* case seeking to reject entirely the reproduction approach is similarly an attempt to supply missing cross-examination (cf. App. 38–40, 50–51). Such cross-examination and responding redirect would, we believe, have brought out the fact that with regard to properties such as those here involved, the reproduction approach is very important as indicating the maximum amount any buyer would pay. Cf. *Riley* petition for rehearing, pages 11–12. The cubic-foot method of determining reproduction less depreciation has been criticized as a crude "rule of thumb." *Riley* opinion, p. —. This, of course, is a factual matter for appraisers, not a legal question for court decision. However, the fact is such a process is uniformly accepted in the appraisal field to the extent that untold millions of dollars are paid or loaned on appraisals in which the square foot or cubic foot method of reproduction less depreciation has been employed. This is shown by examination of outstanding appraisal authorities. See Boeckh's Manual of Appraisals (2d Ed., 1934) where it is stated (p. 19):

> The Boeckh Manual is designed primarily for the determination of Reproduction Costs and Present Sound Value, and is based primarily on schedules of Cubic Foot Costs. Complete and careful provision has been made for modifying these basic costs for all variations so that, in the hands of a careful appraiser, it produces results of remarkable accuracy.

Use of this method of appraisal is so prevalent that other services, such as the Dow Service, Incorporated, and The Marshall & Stevens Co., as well as E. H. Boeckh and Associates, specialize in reporting on construction costs of different types of structures in various parts of the country for this purpose.

See also, The Appraisal of Real Estate, American Institute of Real Estate Appraisers (1st Ed. 1951), pp. 77, 194–195, 205. That Manual states at page 199: "The square-foot and cubic-foot methods are employed most frequently by appraisers." Appellant's criticism of the government appraisers should, we submit, have been directed at them on cross-examination where they would have had an opportunity to respond and do not constitute a legal ground for discrediting those appraisals.

There was ample testimony to support the verdict, hence appellant's point IV, Br. 9–10, likewise constitutes no basis for reversing the judgment.

CONCLUSION

For the foregoing reasons it is submitted that the judgment below should be affirmed.

Respectfully,

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SEPTEMBER 1957.

Mr. Wilkes' witness took that stand and he said that he had been in the business 35 years, since he was a young man. He was familiar with southwest. I don't question that. That gentleman believed what he said, and it is up to you to evaluate his judgment.

He referred to the low-income group. That there was a demand for these houses. The people wanted them. They didn't care about values. They needed the houses and they wanted them.

So, the dealers got busy. And you remember the sale, the $39,000 sale to Cunningham. But before it went to Cunningham, it went to Mr. Staley. And Mr. Smoot testified that the average per house that Mr. Staley bought it for, was $1,833.

Then, Mr. Staley, through Mr. Wilkes' own witness, said that the Cunningham person was a straw party. He knew Cunningham—worked in the Hamilton Realty Co.

So then, they make a deal through a straw party. They sell it for $39,000 and they come up with a $6,500 value each.

Then, after establishing that value of $6,500, not content with the jump from $1,833 to $6,500, they decide to sell them off to these low-income, uninformed people.

I say uninformed because we had three of them on the stand, and you could observe them. One didn't know what a first trust was. One said he couldn't read very well.

We now have it up to $8,950, through the sale to these individual low-income folks.

And there is a constant turnover for some reason or other, which the record shows and which the testimony shows.

And I now ask you gentlemen, who owns the property? Mr. Henry P. Staley. It is right back at his doorstep. He owns it.

And you use your judgment why he owns it.

At this time, I want to comment on something that I can't understand as to the arguments here.

Mr. Wilkes would have you believe you can't go to the records and look at the record. They don't tell you anything. You have got to have personal knowledge.

Yes, you have to have the personal knowledge that his expert witnesses had, because they were in this group that was

dealing in it. Dealing in what? Dealing in human misery. That is what they were dealing in.

Then we get one of the other attorneys for the owners, Mr. Clarke. He shows you a deal from the record. He relies on it. You don't have to have personal knowledge of this one. It is there. And by the same token, Mr. Dorsey does the same thing.

And Mr. Melrod does the same thing on 815—lot 815.

You know, that is not understandable to me. You blow hot, and you blow cold. If this doesn't suit you, it is this way.

* * * * *

JURY CHARGE

The COURT: Gentlemen of the Jury, you are told that the authority of the plaintiff to take the property involved in this case, and the propriety of the purpose for which it has been taken, have been determined. You will not, therefore, entertain any feeling against the plaintiff because it took private property. On the other hand, you will not entertain any feeling against the property owners because they have asked for a determination in court of the fair value of the land taken. All the parties are here by legal right, and they stand on complete equality in this Court.

The duty to be performed by the Jury in this case is to ascertain and award just compensation for the parcels of land, including the buildings thereon, in this proceeding by the United States, with reference to the most advantageous and valuable use or uses to which the respective properties could be put.

The Jury are instructed that the law requires that the Jury view and examine the property sought to be taken. This not only enables the Jury to see for themselves the nature, character, location, and general surroundings of the property so that they may intelligently follow the testimony of the witnesses; but it also enables the Jury to form its own opinion and judgments as to the questions you are now called upon to decide.

You may make further inspections of all or any of the properties taken. If this be done, you must act together as a body.

You shall take into consideration the opinions of the witnesses who have testified, and give to such opinions the weight to which you think them fairly entitled, but you are not restricted to a mere consideration of the evidence adduced by the parties.

You may exercise your own powers of judgment and observation as well in arriving at your verdict. You must, however, confine your deliberations to the evidence that has been offered and to your own judgment based on your view and inspection of the property. You are the sole judges of the credibility of the witnesses, and the weight to give to their testimony.

The Jury viewed the property involved in this case on September 28 and 29, 1955, and your view is part of the evidence in this case. However, you must determine the fair market value of the several parcels involved in this case as of June 30, 1955, the date when title passed from the respective owners to the United States.

You have further heard testimony by the expert witnesses as to the condition existing as of June 30, 1955. If you should find that there was a change in any of the properties between June 30, 1955, and September 28 and 29, 1955, you must disregard such changes so found by you to have occurred in arriving at your finding of the fair market value of such properties.

By most valuable use of which a property is capable, is meant either some existing use or some use which, had the property not been taken by the plaintiff, it is reasonable to conclude the property might have been put to by the owner; such a use as probably would have been taken into account by a seller and by a buyer in a free and unrestrained market.

By fair market value is meant what the property would sell for in cash, or on terms of reasonable credit, by one who is willing but is not obliged to sell, to one who desires but is not obliged to buy.

Just compensation, within the meaning of the Constitution,

means the full and perfect equivalent in money of the property taken, whereby the owner is put in as good a position, pecuniarily, as he would have occupied if his property had not been taken.

Just compensation means compensation which is just, not only to the individual whose property is taken but to the public which is to pay for it; and as estimated by the Jury, should represent the fair market value—no less, and no more—of the property of which the owner of each parcel will be deprived by the appropriation of the same to the public use by the United States of America.

In determining fair market value as of June 30, 1955, you must assume a market for the subject properties which is entirely unaffected by the Government's declared intention to acquire the property for public use, or any other special or extraordinary circumstances whether likely to enhance or depress the price.

In ascertaining the present fair market value of the properties taken in this proceeding, the Jury shall not take into account any effect upon the value resulting from the plaintiff's taking.

In determining fair market value, you must consider all of the circumstances surrounding the property and each parcel. You will consider the location of the property with reference to all its surroundings, the availability of schools, churches, playgrounds, recreation centers, health centers, commercial facilities, transportation facilities, and proximity of places of employment in relation to location of homes, and the general character of the community in which the property was located.

You will consider the use to which the property was being put at the time it was taken, or immediately before taking; and you will also consider the highest and best use to which the property could have been put, without regard to the public development which has occasioned the taking in this case.

The market value of the land is not limited to its value for the use or uses to which it is now being applied by the owners thereof.

If the whole, or any part of said land, is peculiarly adapted by its location, surroundings, natural advantages, or intrinsic

character to some particular use or uses which gives it a higher market value than it would otherwise have, the circumstance or circumstances which make up such peculiar adaptability for such particular use or uses, shall be considered; and the amount awarded as compensation for the land should be based upon its present fair market value in view of the most valuable use or uses for which it is shown to be adapted.

By the most valuable use or uses to which the property can or may be put, is meant either some existing use, or one which the evidence shows is so reasonably likely in the near future that the availability of the property for that use would affect its present market price and would now be taken into account by a purchaser under fair market conditions.

The fact that the most profitable use of a parcel of land can be made only in combination with other land does not necessarily exclude that use from consideration, if the possibility of combination is reasonably sufficient to affect the market value. It does not mean that the Jury should attempt to appraise the present fair market value of the property by its adaptability or availability for remote and conjectural future uses.

The prices paid for similar property in recent sales under free and fair market conditions in the general vicinity may be considered by the Jury, because such sales tend to indicate what the fair market value of the property involved in this proceeding may be.

Such sales of similar property in the vicinity, and within a reasonable time of the taking, afford one of the indications of the fair market value, but the prices paid in such sales are not absolutely binding on the Jury. You may consider them as one of the elements of the evidence that indicates what the fair market value of the property in dispute was when it was taken.

Since compensation for condemned lands is measured by market value, the price paid at prior sales of the same property, reasonably recent and not forced, is evidence of market value.

The Jury is instructed that the assessed value placed upon the parcels in this case for taxation purposes is not to be considered by the Jury as indication of value, and no juror should allow himself to be informed with respect to the assessed valuation in any manner. There is no evidence here—there has

been none offered—of any tax assessment values, so do not give it any consideration.

You are instructed that federal documentary stamps are required upon deeds of real estate only in an amount equivalent to the equity transferred. If real estate is sold subject to a prior existing trust, federal documentary stamps are not required with respect to that part of the sales price represented by the seller taking subject to, or assuming, a prior existing trust.

The Jury should acquaint themselves thoroughly with these instructions given them by the Court, which constitute one comprehensive whole, and should be so considered by them. In other words, the instructions are to be applied as a whole to the facts of the case, and the Jury should consider all the instructions together as they relate to the facts.

The verdict must be in writing, subscribed by the jurors, not less than three jurors concurring therein. And it must set forth, parcel by parcel, the compensation to be paid for the land and the buildings condemned.

You are told that a person who by education, study and experience has become an expert in any art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case.

You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment, the reasons given for it are unsound.

The burden of proof as to value of the land and improvements taken rests upon the property owners. Such burden of proof is established by a preponderance of the evidence. Such preponderance is determined not alone by the greater number of the witnesses testifying to a particular state of facts.

As applied to the issue of value in this case, it means that the testimony on behalf of the property owners must have greater weight in your estimation—have a more convincing effect—than that of the plaintiff.

If you find that the testimony on any essential point is evenly balanced, then your finding as to such point must be against the property owners who have the burden of proof.

The term "preponderance of the evidence" means such evidence as, when weighed with the evidence opposed to it, has more convincing force.

The law makes the Jury the sole judges of the credibility of the witnesses, and of the weight you will accord the testimony given by them.

You should give to each witness that degree of credit and effect which, in your honest judgment, you think it ought to have.

In coming to your conclusion as to what weight should be accorded the testimony of any particular witness, you may, and properly should, take into consideration as far as you are able to do so, the manner and appearance of the witness when on the stand; and whether the testimony of the witness be frankly and honestly given; also what, if any, interest or lack of interest a witness may have in the outcome of the case, and whether on that account such witness has colored in any way the facts related in his testimony.

You are permitted to bring to your aid your general knowledge of men and things to the end that your verdict will be a true and just one.

If you find that any witness has knowingly testified falsely with respect to any matter material to the issues of the case, and concerning which the witness may not reasonably have been mistaken, you may, if you wish, disregard all or any part of the testimony of such witness.

The members of the Jury may separate when not engaged in the consideration of their verdict.

When the Jury, or a majority of them, shall have agreed upon and signed their verdict they shall, through their foreman, so notify the Court, and the Court will thereupon pass an order setting a day for the return of the verdict in open Court.

The verdict must be in writing, subscribed by the jurors not less than three concurring therein, and must set forth parcel by parcel, the compensation to be paid for the taking of the land and buildings to be condemned. A written form to be

used by the Jury in returning their verdict will be furnished by the Court. I have it here in my hand.

The Jury should deliberate upon its verdict promptly and their verdict should be returned without unnecessary delay. If you have not reached your verdict by the 5th day of March 1956, you will return to the Court and report that fact.

You are told that the exhibits received in evidence, and the transcript of the proceedings, when completed, will be in the hands of the clerk and available for your use upon request. The transcript of the proceedings will contain a copy of these instructions.

While deliberating upon your verdict you will communicate with no one other than your fellow jurors, nor allow anyone to communicate with you regarding the case; and you will inform no one concerning your deliberations or your verdict, or any part of it, until it is returned into open Court.

U. S. GOVERNMENT PRINTING OFFICE: 1957